



Office of Inspector General

Audit Report

**Procurements Made by
Assistance Agreement Recipients
Should Be Competitive**

Report No. 2002-P-00009

March 28, 2002

**Inspector General Divisions
Conducting the Audit:**

**Mid-Atlantic Division
Philadelphia, PA
Central Division
Denver, CO Office
Dallas, TX Office
Northern Division
Chicago, IL
Southern Division
Atlanta, GA
Western Division
San Francisco, CA**

**EPA Headquarters
Offices Involved:**

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Management
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Policy
Prevention, Pesticides, and Toxic
Substances
Research and Development
Water**

EPA Regions Involved:

Nationwide



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL
MID-ATLANTIC DIVISION
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029
(215) 814-5800**

March 28, 2002

MEMORANDUM

SUBJECT: Audit Report:
Procurements Made by Assistance Agreement Recipients
Should Be Competitive
Report No. 2002-P-00009

FROM: Carl A. Jannetti *Carl A. Jannetti.*
Divisional Inspector General
Mid-Atlantic Division (3AI00)

TO: Morris X. Winn
Assistant Administrator for Administration and
Resources Management (3101)

Attached is a copy of the audit report on procurement practices by recipients receiving financial assistance under grants and cooperative agreements awarded by the Environmental Protection Agency (EPA). This is the third in a series of audits that shows the need for more EPA oversight of assistance agreements. The objective of the audit was to determine whether assistance agreement recipients adhered to the Code of Federal Regulations when obtaining goods and services from contractors.

This audit report contains findings that describe problems the EPA Office of Inspector General (OIG) has identified and corrective actions the OIG recommends. This audit report represents the opinion of the OIG and the findings contained in this audit report do not necessarily represent the final EPA position. Final determination on matters in this audit report will be made by EPA managers in accordance with established EPA audit resolution procedures.

ACTION REQUIRED

In accordance with EPA Order 2750, you are requested to provide a written response to the audit report within 90 days of the date of this report. We have no objections to the further release of this report to the public.

If you or your staff have any questions regarding this report, please contact me or Richard Howard at (215) 814-5800. For your convenience, this report will be available at <http://www.epa.gov/oigearth/eroom.htm>.

cc: Howard Corcoran (3901R)
Martha Monell (3903R)

Executive Summary

Purpose

Prior audits by the Environmental Protection Agency (EPA) Office of Inspector General (OIG) disclosed numerous problems related to procurement practices of assistance agreement recipients. As a result, we took a nationwide statistical sample of agreements to provide an overview of recipient procurement practices. The intent was to identify systemic issues that need nationwide attention. With that in mind, our audit objective was to determine whether recipients making procurements with Federal funds: provided for competition, justified non-competitive awards, performed cost or price analyses, and maintained the proper policies and management controls.

Results in Brief

EPA had no assurance that as much as \$187 million spent by assistance agreement recipients for procurements was used to obtain the best products, at the best price, from the most qualified firms. We found that recipients did not compete contract awards or perform cost or price analyses as required by regulations.

The conditions noted occurred because EPA did not monitor recipients' procurement transactions. Also, recipients said they did not have sufficient knowledge of procurement regulations, and often procured services as a result of familiarity and long-term relationships with contractors.

Obtaining the best price allows EPA to fund the maximum number of projects to support its environmental mission. It is also important to have the most qualified firm perform each task, and even when a firm is qualified, failure to compete the work can result in a contract price that is not competitive with the market. Also, lack of competition can result in other problems, such as conflicts of interest.

Recommendations

We recommended that the Assistant Administrator for Administration and Resources Management require EPA grants specialists and project officers to perform the level of monitoring of assistance agreement procurement transactions required by the Post Award Management of Assistance Agreements Policy (GPI-98-6) and the EPA Project Officers

Manual. We also recommended that the Assistant Administrator require EPA personnel to ensure that when assistance agreement recipients identify proposed contractors in their application that the sole source justification provided is adequate and a cost or price analysis is performed.

Agency Response and OIG Evaluation

The Agency agreed with the OIG on the need to foster competition in recipient procurements to achieve high quality work under EPA assistance agreements at the lowest cost. The Agency noted that it has taken corrective action to address specific procurement violations noted in the report. Further, EPA stated it is moving aggressively to educate recipients and EPA personnel on grant procurement requirements. However, the Agency disagreed with the level of oversight proposed by the OIG for procurement transactions under \$100,000. The Agency also suggested that rather than monitor every recipient procurement transaction, the Office of Grants and Debarment work with the OIG to develop a risk-based strategy to monitor recipient procurements.

We agree with the efforts EPA is undertaking to educate recipients and EPA personnel. However, we disagree with the level of oversight proposed by the Agency. We believe that EPA needs to monitor recipients' procurements in accordance with the requirements of both the Post Award Management of Assistance Agreements Policy (GPI-98-6) and the EPA Project Officers Manual.

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Introduction

Purpose

Recent Office of Inspector General (OIG) audits of assistance agreements have disclosed numerous problem areas related to the procurement practices of recipients. Chief among them has been the failure of recipients to obtain competition for contracts awarded with Environmental Protection Agency (EPA) funds. As a result of these concerns, the OIG decided to take a nationwide statistical sample of assistance agreements, for the purpose of providing an overview of procurement practices of agreement recipients. The intent was to identify systemic issues that need nationwide attention, rather than focus on individual recipients that may not represent the majority.

The specific objective of this audit was to determine whether these recipients, when obtaining goods and services with Federal funds:

- Provided open and free competition.
- Justified non-competitive awards.
- Performed cost or price analyses.
- Maintained the proper policies and management controls.

Background

An assistance agreement is the legal instrument EPA uses to transfer funds for a public purpose in the form of either a grant or cooperative agreement. Fund recipients agree to follow the applicable Code of Federal Regulations (CFR), including requirements for all procurement transactions for goods and services needed to accomplish projects. Oversight of agreements is conducted by EPA's Grants Administration Division, Program Offices, and Regional Grants Management Offices.

Recipients of assistance agreements include: states, interstate agencies, counties, municipalities, Federal agencies, sub-state or special purpose districts, public and private colleges and universities, Indian tribes, profit and non-profit organizations, individuals, research and development centers, and foreign entities.

For assistance agreements awarded to institutions of higher education and other non-profit organizations, the applicable regulation is 40 CFR

Part 30. For those awarded to state and local governments, 40 CFR Part 31 applies. These regulations require recipients to:

- Conduct all procurement transactions in a manner to provide open and free competition.
- Provide sole source justification for awards without competition in excess of the small purchase threshold (\$100,000).
- Perform a cost or price analysis for every procurement.
- Maintain proper policies and management controls.

The EPA Project Officers Manual states that project officers and grants specialists are responsible for reviewing the recipient's proposed contractors during the application review period. The Manual notes these officials are to provide sufficient oversight throughout the course of an agreement to ensure recipients make procurements in accordance with Federal regulations. These EPA representatives are also responsible for determining whether there is adequate justification for any proposed sole source contracts. However, the recipient is ultimately responsible for adhering to the regulation.

Scope and Methodology

EPA awards about \$4 billion in assistance agreements annually. For our review, we selected a stratified, random sample from a population of agreements totaling \$1 billion for the 2-year period of fiscal years 1999 and 2000. Of that amount, 537 agreements had estimated procurements of at least \$100,000. Those procurements totaled \$340 million. We selected a stratified, random sample of 70 agreements involving \$128 million in procurements. Of those 70, we determined that 20 were exempt from the regulations, and therefore focused on the remaining 50, which had procurements totaling \$108.5 million. We performed the audit in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Further details on our scope and methodology, including the sample, are in Appendix A.

EPA Needs to Better Monitor Procurements by Assistance Agreement Recipients

EPA had no assurance that as much as \$187 million spent by assistance agreement recipients for procurements was used to obtain the best products, at the best price, from the most qualified firms. This amounts to nearly 1 out of every 5 dollars of the \$1 billion awarded to these recipients during the period reviewed. Specifically, we found that recipients did not compete contract awards or perform cost or price analyses, as required by regulations.

The conditions noted occurred because EPA did not monitor recipients' procurement transactions. Also, recipients said they did not have sufficient knowledge of procurement regulations, and often procured services as a result of familiarity and long-term relationships with contractors. We believe recipients need to be educated regarding Federal procurement requirements, however, regardless of their level of knowledge, recipients are still obligated to comply with the regulations.

Obtaining the best price allows EPA to fund the maximum number of projects to support its environmental mission. It is also important to have the most qualified firm perform each task. However, even when a firm is qualified, failure to compete the work can result in a contract price that is not competitive with the market, since contractors will not have any incentive to offer such a price. Also, lack of competition can result in other problems, such as conflicts of interest.

Lack of Competition a Continuing Problem

OIG audits of assistance agreements performed during the past several years disclosed numerous problem areas related to procurement practices of assistance agreement recipients. Chief among them has been the failure of recipients to obtain competition for contracts awarded with EPA funds. For example, a non-profit assistance agreement recipient awarded two sole source contracts to its for-profit subsidiary under the grant we reviewed. Likewise, this recipient awarded sole source contracts to three for-profit companies created by its for-profit subsidiary to market technology developed by the recipient. This example and numerous other OIG audits have

shown that circumventing competition had various adverse effects. Specifically, we found that assistance agreement recipients:

- Awarded contracts without determining the reasonableness of the contractor's price.
- Awarded contracts based on familiarity instead of market searches to find the best contractor.
- Awarded contracts to their own subsidiaries without competition.
- Provided favored contractors with advance knowledge of procurement information.
- Permitted contractors to develop requirements and statements of work for contracts received, as well as budgets and estimates for contracts awarded to them.
- Authorized contractors to provide services without contracts.

Procurement Regulations Not Sufficiently Followed

Our review disclosed numerous instances where recipients of EPA assistance agreements did not adhere to regulations when awarding contracts. We reviewed 50 recipients, with procurements totaling approximately \$108.5 million. Of the 50 recipients, 28, with procurements totaling \$37.7 million, did not sufficiently follow procurement requirements regarding competition and conducting a cost or price analysis. As a result, there was no assurance that the recipients obtained the most qualified contractor at the best price. Details are summarized in the table and paragraphs that follow.

Status	No. of Agreements	Value of Contracts (millions)
Procurements made with no competition, no sole source justifications, and no cost/price analysis.	10	\$12.91
Procurements made with no competition and no required cost/price analysis. Sole source justification not required since procurements below \$100,000 threshold.	10	5.02
Procurements made with no competition but adequate sole source justification performed. However, no cost/price analysis performed.	3	6.04
Procurements made with competition but no cost/price analysis.	5	13.68
Total	28	\$37.65

Lack of Competition

We concluded that 23 recipients did not compete their procurements. Of greatest concern were the 10 recipients who did not compete procurements over the \$100,000 threshold and did not have sufficient documentation to justify their sole source awards. Another 10 recipients did not compete procurements or perform required cost or price analyses, but because the procurements were under the \$100,000 threshold, the recipients were not required to document sole source justifications. The remaining three recipients who did not compete had adequate sole source justifications, but they did not conduct required cost or price analyses.

These 23 recipients did not place advertisements seeking bids or could not provide any documentation indicating that bids were received and reviewed. For those recipients under the \$100,000 threshold, although documentation was not required, we confirmed through discussions with recipient personnel as well as review of records that there was no competition. Included in 40 CFR § 30.43 is a statement requiring that, “all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.” A similar statement is in 40 CFR § 31.36 (c)(1). In effect, these recipients did not perform market searches to find the most qualified firms to help accomplish EPA’s mission at the most competitive price.

Sole Source Justifications Not Provided or Inadequate

As noted, 10 of the recipients with procurements over \$100,000 did not have the documentation required by 40 CFR § 30.46 and 31.36 to justify sole source awards. Specifically, two recipients did not provide us with any justifications when requested, and we do not consider the justifications provided by the other eight to be adequate. Examples of inadequate justifications follow:

- “...the project was highly specialized...our engineers are aware of how much labor should cost and what should be involved...”
- “...working with them would result in faster test plan development...”
- “Going through a full solicitation, with advertising, proposal submittal and review, would have taken several months.”
- “The organization or consultant with the most expertise in the particular area was easily recognized.”
- “The subcontractor was extremely responsive and thorough on previous work.”

Recipients who do not adequately document justification for noncompetitive awards provide little assurance the selection was made with regard for efficiency and cost effectiveness.

Cost or Price Analyses Not Conducted

As already noted, 28 of the recipients reviewed did not perform a cost or price analysis for their procurements. This included the 23 discussed previously who did not compete plus an additional 5 who did.

As outlined in 40 CFR § 30.45 and 31.36 (f), a cost or price analysis must be performed in connection with every procurement action regardless of whether or not provision was made for competition. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted and market prices. Recipients that do not perform a cost or price analysis provide little assurance that the firms they select are completing the work at the

best prices. Furthermore, when recipients also do not provide for competition, no assurance exists that the contract price is reasonable.

Various Causes Resulted in Insufficient Competition

EPA Did Not Provide Sufficient Oversight

EPA officials did not provide sufficient oversight to ensure that assistance agreement recipients made procurements in accordance with the regulations. Most project officers had limited or no information regarding recipient procurement contracts, including the number or type of contracts and whether they were awarded competitively or non-competitively.

In general, EPA did not appear to place sufficient emphasis on competition. We noted in a prior audit, *EPA's Competitive Practices for Assistance Awards* (2001-P-00008), issued May 21, 2001, that EPA itself did not have a policy to require program officials to competitively award assistance agreements when appropriate. EPA often awarded noncompetitive agreements based on unsupported belief that the recipients were the only entities capable of performing the work. EPA's lack of emphasis on competition is perpetuated by the very recipients to whom EPA awarded assistance agreements.

As required by the EPA Project Officers Manual and the Post Award Management of Assistance Agreements Policy (GPI-98-6), EPA is to provide sufficient oversight to ensure assistance agreement recipients make procurements in accordance with Federal regulations. The project officer is responsible for determining whether proposed contract costs appear reasonable. Both the project officer and grants specialist are responsible for determining whether there is adequate justification for any proposed sole-source contracts. Also, 40 CFR § 30.44 (e) provides EPA the ability to request bid information or a cost or price analysis and, if necessary, question recipient procurements.

EPA On-site Reviews Can Be Beneficial

The Grants Administration Division conducted on-site reviews for three recipients selected in our sample. We believe these reviews help to ensure that recipients are complying with Federal procurement regulations. We encourage the Division to continue and further increase these recipient reviews, and to perform an on-site review of a recipient who did not respond to our information requests.

Recipients Had Insufficient Knowledge of Regulations

EPA did not ensure that recipients had sufficient knowledge of the requirements or the procurement standards. The applicable regulations are listed on the front page of the assistance agreement signed by the recipient. However, some recipients said they were unaware that the CFR governed their agreement. At least two recipients indicated they did not even know what the CFR was, and another thought it only applied to EPA contracts and not contracts awarded by assistance agreement recipients.

Also, several recipients believed that EPA approval of their assistance agreements constituted approval of the contractors listed in their applications. These recipients thought that this approval existed regardless of how those contractors were selected, and used this reasoning as justification for sole source contract awards. These recipients claimed that since EPA reviewed and approved their applications, it also approved the use of the contractors listed therein. One recipient stated that "...bids were not obtained for the subcontractor, since the subcontractor was named in the proposal and accepted by the U.S. Environmental Protection Agency." EPA's position is that it is not approving contractors when it approves funding. Without clarifying this position, recipients may continue to mistakenly assume that they can award contracts without following Federal requirements.

Recipients Often Relied on Familiarity With Contractors

We noted many instances where the recipient continually procured services from the same contractor as a result of familiarity with the firm and a long-term relationship. Two recipients responded that the reason for hiring a particular firm was due to their over 10-year relationship with the firm. Another recipient, located in Nevada, stated that since it was in "an extremely remote, isolated" area, it was "difficult to obtain quotes from nearby consulting firms." Thus, through a referral by community officials, the recipient contracted with an Idaho firm. However, since this recipient was able to procure these services out of state, we question why they were not able to seek bids from other firms. Such cities as Las Vegas, Nevada; Salt Lake City, Utah; and Sacramento, California, are all geographically closer to the recipient than the Idaho firm used and, likely, have qualified firms.

EPA Directed a Noncompetitive Contract Due to Timing

We noted one instance in which EPA directed a recipient to establish a contract with a specific company, contrary to EPA's Code of Conduct. A regional employee did this by writing the sole source justification, along with the scope of work for the contract. In this sole source justification, the regional employee listed the objectives for the contract and concluded that the contract should be awarded without competition. According to the regional employee, the region wanted specific work performed, and, due to timing and familiarity with the contractor, decided to award the contract without competition. This action, which is discussed in a separate report, was inappropriate.

EPA Funds May Not Be Efficiently Used

Inadequate Assurance That Best Price Obtained

Obtaining the best price through competition allows EPA to fund the maximum number of projects to support its environmental mission. Even if a contractor is qualified and responsible, when a contractor knows a bid is not being competed and they will automatically be getting the work, their price is less likely to be competitive with the market. If there is a range that can be charged for a certain service, there is no incentive for the contractor to offer those services at the low rather than high end of the range in the absence of competition. Also, the failure of recipients to perform cost or price analyses prevents them from knowing whether the contractor's price is competitive with the market. Without a market search, neither recipients nor EPA know whether services have been obtained from the best contractor.

We determined that EPA assistance agreement recipients did not award \$37.7 million of the \$108.5 million in procurement contracts in accordance with regulations. Based on our random sample, from a universe of \$340 million in procurements, we made projections with a confidence level of 95 percent. We projected that between \$88 million and \$187 million was awarded by EPA assistance agreement recipients without assurance that contracts were awarded at the best price.

Inadequate Assurance That Most Qualified Firm Performs Task

When there is a lack of competition, neither the recipient nor EPA has any assurance that the firm selected is the most responsible, qualified, and economical. Just because a firm was well qualified to perform a

certain service 10 years ago does not mean it remains the most qualified. Also, a firm awarded contracts in the past may not be the most appropriate firm to conduct subsequent work. For example, one recipient awarded two contracts, totaling nearly \$1 million, to an engineering firm without competition based on a long-term relationship. However, for these particular contracts, the firm was tasked to perform many non-engineering functions (such as preparing mailing lists and brochures and developing a web site). These functions should have been performed by someone else at a significantly lower cost.

Other Problems May Arise, Such As Conflicts of Interest

Lack of competition can result in other problems, such as conflicts of interest. For example, one recipient, a watershed management district, did not follow Federal procurement procedures when using EPA funds to hire an engineering firm through two contracts totaling \$907,000. Events that preceded award of the first contract should have precluded the firm from obtaining the contract due to potential conflicts of interest. The district's application, work plan, budget, and work schedules all displayed that the engineer, and not the recipient, prepared those documents. Furthermore, the district's administrator and several members of the Board of Directors told us that the firm:

- Solicited assistance agreement funds on behalf of the recipient.
- Proposed assistance agreement projects to the Board of Directors.
- Advised the district to use the "request for qualifications" procurement method for the engineering contract.
- Wrote the request for qualifications advertised in newspapers (for the contract then awarded to the firm).
- Wrote both contracts it entered into with the district.

The above clearly represent a conflict of interest, according to 40 CFR § 31.36(b)(3), which states in part that:

No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or

agent . . . has a financial or other interest in the firm selected for award.

By preparing the original application, work plan, budgets, and work schedules for the EPA assistance agreement awarded to the district, the engineer, as an agent of the grantee, had advance knowledge about the assistance agreement, intended contracts, their amounts, and proposed work schedules and forecasts for subsequent years. The district's actions in giving the firm the "inside track" compromised the integrity of the contract award and violated EPA regulations.

Conclusion

The regulations governing assistance award procurement activities were established to maintain management controls over the funds and provide assurance that funds would be used in an efficient and cost effective manner. By allowing recipients to forego these requirements, EPA diminishes the effectiveness of its programs, the number of projects funded, and, ultimately, its ability to achieve its environmental mission.

Recommendations

We recommend that the Assistant Administrator for Administration and Resources Management require EPA grants specialists and project officers to:

1. Perform the level of monitoring of assistance agreement procurement transactions required by the Post Award Management of Assistance Agreements Policy (GPI-98-6) and the EPA Project Officers Manual.
2. Ensure that when assistance agreement recipients identify proposed contractors in their application that the sole source justification provided is adequate and a cost and price analysis is performed.

EPA Response and OIG Evaluation

In this section, we have summarized EPA's response, followed by our evaluation of the response. The complete response is included as Appendix B to the report.

EPA Response

EPA stated that it fully agreed with the OIG on the need to foster competition in recipient procurements to achieve high quality work under EPA assistance agreements at the lowest cost. EPA noted that the Office of Grants and Debarment and the Regional Grants Management Offices have taken corrective action to address a number of the project-specific procurement violations identified in the report. Further, they stated that the Office of Grants and Debarment is moving aggressively to educate recipients and EPA personnel on grant procurement requirements. The Agency also stated that adherence to the regulations remains a mandatory prerequisite for the receipt of an EPA grant, regardless of a recipient's level of knowledge.

EPA agreed with the OIG that review and monitoring of procurement transactions is an important part of fostering competition in recipient contracts. However, the Agency stated that the level of oversight contemplated by the OIG appears to be inconsistent with government-wide procurement requirements for procurement transactions under \$100,000. Further, it suggested that, rather than monitor every procurement transaction, a better use of Agency resources may be to concentrate on recipients that meet specified, risk-based criteria. EPA has directed the Office of Grants and Debarment to work with the OIG on this issue.

OIG Evaluation

We agree with the efforts the Office of Grants and Debarment is undertaking to educate recipients and EPA personnel on grant procurement requirements. We also agree that, regardless of their level of knowledge, recipients are responsible for complying with Federal procurement regulations. Although education will assist recipients with the administration of their agreements, education alone will not ensure that recipients comply with procurement regulations. We believe that adequate monitoring by EPA, in conjunction with education, would best provide assurance of compliance with the regulations.

We disagree with the Agency's position regarding the appropriate level of oversight. It is our opinion that we are not requesting a level of oversight beyond that already established by current policies.

EPA's Post Award Monitoring of Assistance Agreements Policy (GPI-98-6) includes requirements for Baseline Monitoring (Tier I) of all assistance agreements by Grants Management Offices. The first

Baseline Monitoring strategy is to “monitor recipients’ compliance with all terms and conditions in all grants.” One of the conditions of nearly all grants is the recipient’s compliance with the applicable CFR, which includes procurement requirements. The selection of recipients using risk-based criteria as suggested by EPA may be appropriate for Tier II monitoring activities¹; however, the Policy requires that all awards receive Tier I Baseline Monitoring.

According to the Project Officers Manual, monitoring of a recipient’s procurements should begin with the receipt of the application and continue throughout the life of the agreement. Both the project officer and Grants Management Office are responsible for monitoring. The project officer is responsible for determining whether proposed contracting and subcontracting costs are reasonable and necessary. If an applicant is proposing to award a sole-source contract, it must provide its reasoning so both the project officer and Grants Management Office can determine whether there is adequate justification for the proposed contract. Both the project officer and Grants Management Office must ensure the recipient complies with all terms and conditions of the award. We are not asking that EPA obtain documentation for every procurement transaction. Rather, we are asking that EPA monitor recipients and inform them of their obligation to follow Federal procurement requirements. We believe recipients would be more likely to adhere to these requirements if they are aware that EPA is monitoring them.

The Agency noted in its response that the level of oversight contemplated by the OIG appeared to be inconsistent with government-wide procurement requirements for transactions under \$100,000. We recognize that the level of monitoring necessary for procurements under \$100,000 is less than that for procurements greater than \$100,000, and have revised our recommendation accordingly. However, 40 CFR Parts 30 and 31 require recipients to prepare a cost or price analysis for every procurement transaction regardless of the amount. For procurements under \$100,000, this analysis is the only assurance that the procurement was made at a market-level price. Unless EPA monitors recipients and determines if this analysis has been performed, it does not know if the most economical contractor was selected. However, we will evaluate Agency plans to implement a risk-based monitoring criteria for procurements under the small purchase threshold.

¹Tier II Monitoring goes beyond the usual baseline activities, and includes things such as on-site evaluations, training, and in-depth telephone reviews. One of the factors in determining Tier II monitoring includes, but is not limited to, grantees designated as high risk.

By educating recipients and monitoring recipients' procurements, EPA can better assure that recipients are getting the best products, at the best price, from the most qualified firms.

Appendix A

Details on Scope and Methodology

We performed this audit in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. This audit included tests of the program records and other auditing procedures deemed necessary.

We reviewed management controls and procedures specifically related to our objectives. However, we did not review the internal controls associated with the input and processing of information in EPA's Grants Information Control System.

We reviewed Federal procurement standards provided in 40 CFR Parts 30 and 31, and the EPA Project Officers Manual.

We interviewed project officers and grants specialists at EPA Headquarters and EPA Regions 2, 3, 4, 5, 6, 9, and 10. We reviewed both Grants Administration Division files and project files maintained by individual program officials. We obtained copies of assistance agreement applications and work plans, program decision memoranda, assistance agreements, budget proposals, and limited documentation regarding procurement. We reviewed files to determine whether recipients followed Federal procurement regulations regarding:

- Providing open and free competition for all procurements.
- Preparing justifications for non-competitive awards over \$100,000.
- Performing cost or price analyses for procurements.
- Maintaining proper policies and management controls, such as those related to daily rate restrictions for consultant payments, written codes of conduct, and written procurement procedures.

We also requested from recipients procurement documentation, pertaining to the items listed above, and recorded their responses.

We selected a stratified, random sample from a population of recipients totaling \$1 billion, for the 2-year period of fiscal years 1999 and 2000. We limited this population to: interstate agencies, sub-state or special purpose districts, public and private colleges or universities, Indian Tribes, profit and non-profit organizations, and research and development centers. We stratified the recipients by estimated contract amounts provided by the Grants Information Control System.

There were 537 EPA assistance agreements with estimated procurements of at least \$100,000. The procurements for these totaled \$340 million. The sample, of 70 assistance agreements involving \$128 million in procurements, was separated into two strata, as follows:

- The first strata, from which we reviewed 40 agreements, consisted of recipients estimated as having contract amounts between \$100,000 up to \$999,999. For some recipients, although total procurements were more than \$100,000, some of the individual procurements were less than that amount.
- The second strata, from which we reviewed 30 agreements, included recipients with estimated contract amounts greater than \$1 million.

Of the 70 recipients, 20 were determined to be exempt from the regulations. Specifically, 6 recipients were Federal Demonstration Partnerships and had the applicable regulations waived by EPA, and 14 received Office of Research and Development Grants for which EPA had a rigorous pre-award evaluation process in place. We therefore focused on the remaining 50 recipients, which had \$108.5 million in procurements.

During our audit, we noted several minor issues that we brought to EPA's attention for action. These involved such issues as an out-of-date subsection of the CFR, and the absence of written codes of conduct or written procurement procedures for some recipients.

We conducted an entrance conference with officials from EPA's Office of Administration and Resources Management on August 9, 2000. We held several teleconferences with Grants Administration Division officials and informed them of our preliminary findings and recommendations, and requested their input. Generally, they agreed with our recommendations and provided input regarding corrective action. We completed our fieldwork on November 29, 2001. We issued the draft report on December 26, 2001 and held an exit conference with the Office of Administration and Resources Management on March 15, 2002. The comments from that Office and our evaluation are summarized after the report recommendations, and the complete response is provided in Appendix B.

Separate Memorandum Reports Issued

During this audit on procurements made by assistance agreement recipients, we issued two separate memorandum reports addressing specific problems found at individual recipients. In addition to a lack of competition and the failure to conduct cost or price analyses, we found the following:

- ❑ One recipient did not follow Federal procurement regulations regarding conflicts of interest when it awarded contracts to an engineering firm. In particular, the firm, which had a 20-year relationship with the recipient, had prepared the recipient's application, work plan, budget, and work schedules for the contracts it received.
- ❑ For another recipient, we found several violations of Federal procurement regulations and potential conflicts of interest. This recipient issued one unallowable type of contract, and issued contracts that exceeded the maximum allowable consultant rates. Further, an EPA region employee directed the hiring of one of the contractors and wrote the sole source justification for the recipient.

Prior Audit Coverage

On May 21, 2001, EPA OIG issued Report No. 2001-P-00008, *EPA's Competitive Practices for Assistance Awards*. This audit disclosed that EPA did not have a policy that requires program officials to award discretionary assistance funding competitively. The OIG recommended that EPA issue a policy stating that program offices compete their assistance agreements to the maximum extent possible, and ensure there are sufficient written justifications to support non-competitive awards. The OIG also made recommendations related to improving the accuracy of EPA's assistance program information.

In April 2001, the U.S. General Accounting Office issued Report No. GAO-01-366, *EPA's Oversight of Nonprofit Grantees' Costs Is Limited*. This audit found that, as currently implemented, EPA's post-award grant management policy provides minimal assurance that unallowable costs for nonprofit grantees will be identified.

On January 29, 2002, EPA OIG issued Report No. 2002-2-00008, *Procurement Practices Under Grant No. X825532-01 Awarded to MBI International*. This audit report, on a nonprofit organization that received EPA grant funds, disclosed that the recipient awarded two

sole source contracts to its for-profit subsidiary under the grant. Likewise, this recipient awarded sole source contracts to three for-profit companies created by its subsidiary to market technology developed by the recipient. We also noted the appearance of a conflict of interest.

Appendix B
EPA Response to Draft Audit Report



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

February 19, 2002

**OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT**

MEMORANDUM

SUBJECT: Draft Audit Report: **Procurements Made by Assistance Agreement Recipients Should Be Competitive**, Report No. 2000-001394 (December 26, 2001)

FROM:

David J. O'Connor
Acting Assistant Administrator

A handwritten signature in black ink that reads "David J. O'Connor".

TO:

Carl A. Jannetti
Divisional Inspector General
Mid-Atlantic Division

This memorandum is in response to the Office of Inspector General's (OIG) draft audit report (Draft Report) on procurement practices of recipients awarded assistance agreements by the Environmental Protection Agency (EPA), addressed to Deputy Administrator Linda Fisher.

Based on a nationwide statistical sample of assistance agreements, the Draft Report finds that there is insufficient competition in recipient procurements. To address this finding, the Draft Report recommends: 1) that the Agency increase its monitoring of recipient procurement transactions to ensure that all transactions are conducted in accordance with regulatory requirements; and 2) that the Agency review all proposed contracts identified in grant applications to ensure that the sole source Justification is adequate and a cost and pricing analysis has been performed.

At the outset, let me state that I fully agree with the OIG on the need to foster competition in recipient procurements to achieve high quality work under EPA assistance agreements at the lowest cost. To that end, I am pleased to note that EPA's Office of Grants and Debarment (OGD) and the Regional Grants Management Offices have taken corrective action to address a number of the project-specific procurement violations identified in the Report. Further, OGD is moving aggressively to educate recipients and EPA personnel on grant procurement requirements. These training efforts include:

Recipient Training - In September, OGD will present training to approximately 160 recipient representatives (primarily from the non-profit sector). The training will focus on recipient responsibilities with specific instruction on applicable procurement regulations.

Grant Specialist Training - In June, OGD will present comprehensive grants

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management training to EPA's Grant Specialists, including training on procurement documentation for sole-source justifications and cost and pricing analyses.

Project Officer Training - OGD is modifying the Agency's basic Project Officer Training to place greater emphasis on application, budget and procurement review.

Instructional Materials - OGD and the OIG are exploring the possibility of jointly developing instructional materials on procurement and financial management requirements that would be included in EPA grant application packages.

Turning to the Draft Report's recommendations, I agree with the OIG that review and monitoring of procurement transactions is an important part of fostering competition in recipient contracts. As noted in the Draft Report, OGD is continuing to perform on-site reviews of selected recipients that cover, among other things, procurement practices. At the same time, the level of oversight contemplated by the OIG appears to be inconsistent with government-wide procurement requirements for procurement transactions under \$100,000. I have therefore asked OGD to discuss this issue with the Office of General Counsel. In addition, rather than monitoring every recipient procurement transaction as suggested in the Draft Report, a more strategic use of the Agency's resources may be to concentrate on procurement transactions that meet agreed-upon, threshold criteria. For example, under the Agency's post-award monitoring policies, OOD does not conduct desk or on-site reviews of all recipients, but instead focuses on recipients that meet specified, risk-based criteria. I have directed OGD to work with you to determine whether a similar methodology can be developed for the approval and monitoring of procurement transactions.

Finally, to avoid confusion on the compliance obligations of recipients, I would suggest that the OIG revise the discussion in the Draft Report addressing EPA's policy on grant competition and the lack of recipient knowledge of procurement requirements. I concur with the Draft Report's observation that EPA should have a clear policy for competition in the award of grants, and the Agency is in the process of developing such a policy. Nevertheless, recipients have an independent obligation, separate and apart from EPA's approach to grant competition, to comply with the procurement regulations. Similarly, while the Agency needs to better educate recipients about grant procurement standards, adherence to the regulations remains a mandatory prerequisite for the receipt of an EPA grant, regardless of a recipient's level of knowledge. OGD is exploring additional steps to remind recipients of their procurement obligations.

Thank you for the opportunity to comment on the Draft Report. The Agency looks forward to working with you to develop approaches that will promote competition in recipient procurements

in an efficient and effective manner. If you have any questions about these comments, please contact Howard Corcoran, Director, OOD at (202) 564-1903 or Marty Monell, Director, Grants Administration Division, at (202) 564-5387.

Attachment

cc: Morris Winn
Marla Diamond
Marty Monell
Marguerite Pridgen
Howard Corcoran
Senior Resource Officials
Grants Customer Relations Council

Appendix C

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