



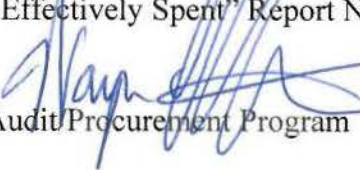
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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September 24, 2015

MEMORANDUM

SUBJECT: Response to Office of Inspector General final report "The State of Colorado Did Not Fully Assure That Funds Intended to Treat Mining Wastes and Remove Contaminants from Water Were Effectively Spent" Report Number: 14-R-0032 November 19, 2013

FROM: Wayne Anthofer 
Director, Grants/Audit/Procurement Program

TO: Robert Adachi
Director, Forensic Audits
Office of the Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. Following is a summary of the Environmental Protection Agency Region 8's (Region 8) position, along with our response to each report recommendation. For those recommendations with which Region 8 agrees, we have provided corrective actions and completion dates as appropriate. For the one recommendations with which Region 8 does not agree, we have explained our position. This memorandum also summarizes actions taken by the Region 8 Office of Ecosystems Protection and Remediation (EPR); that office has reviewed and concurred on this response. For your consideration, we have included our report to the Colorado Department of Public Health and Environment and the deviation from 40 CFR Part 35.6565(d)(2) and 40 CFR Part 35.6705 required from the Office of Grants and Debarment.

EPA Region 8's Overall Position

Region 8 has completed a review of the questioned costs identified in the Office of Inspector General's review and, while regulatory requirements were not completely followed by CDPHE, to which CDPHE and EPA concedes, we have concluded that the costs should be allowed. The Department has subsequently revised its procedures to ensure future compliance. Based on this situation, Region 8 requested and has been granted deviations from both 40 CFR §35.6705 and 40 CFR §35.6565(d)(2) on behalf of CDPHE. (See Attachment).

The main parties to this project had a responsibility to ensure that provisions of the cooperative agreement were adhered to and documented by all parties. However, during its follow-up to the audit report, Region 8 was able to review a significant number of documents relevant to the audit report findings, which were further supported by the State of Colorado's response, verification of project accomplishments with EPA Project Officers, site visits to CDPHE to verify the recurring communications on the project, and post-audit support documentation received, the Region is satisfied that the costs in question are reasonable in all material respects.

Region 8 continues to monitor CDPHE as part of our post-award monitoring activities. If CDPHE is selected for an advanced monitoring review, implementation of compliant procedures will be verified. We will continue to provide technical assistance to the extent possible and monitor EPA-funded activities as appropriate.

Agency's Response to Report Recommendations:

No.	Recommendation	Corrective Actions	Completion Date
1	<p>Require CDPHE to reimburse the EPA \$2,593,495 (\$806,250 + \$1,542,000 + \$245,245) for</p> <p>1a. the A/E contract,</p> <p>1b. two CM/GC contract modifications, and</p> <p>1c. one subcontract...</p> <p>...where cost analyses were not provided for all procurements as required by Title 40 CFR § 35.6585(a) and 40 CFR § 35.6565(d) (2), unless CDPHE provides documentation to demonstrate that the prices for these contracts and subcontracts are fair and reasonable.</p>	<p>1a. Region 8 disagrees with this recommendation. 40 CFR §35.6570(a) allows for a CERCLA remedial response Cooperative Agreement recipient to use the same engineer originally procured to conduct any or all of the follow-on engineering activities during subsequent phases of a response <u>without going through the public notice and evaluation procedures</u> if the public notice clearly stated the possibility that the firm or individual selected could be awarded a contract for follow-on services and the initial procurement complied with the procurement requirements.</p> <p>The public notice clearly stated CDPHE's intentions of engaging the A/E through post construction. This was not available to the auditors.</p> <p>Region 8 agrees that maintenance of and accessibility to support documentation for this project, and all EPA funded projects, needs to be improved. However, we did obtain detailed cost estimates that were not available to the auditors. These estimates were prepared and refined by Golder Associates and used by CDPHE and Golder in determining the reasonableness of Moltz's proposals for the two CM/GC modifications and the subcontract for lead equipment. It was noted that Moltz provided their proposal 24 hours in advance of the bid due date as required. Moltz's proposals appeared reasonable. See pages 3 – 8 of the accompanying report for details.</p>	<p>July, 2014 (analysis completed)</p> <p>July, 2014 (analysis completed)</p> <p>July, 2012 (analysis completed)</p>

No.	Recommendation	Corrective Actions	Completion Date
2	Require CDPHE to implement written procedures and controls to ensure that a cost or price analysis is conducted for each future noncompetitive contract awarded in accordance with the requirements of Title 40 CFR § 35.6585(a) and 40 CFR § 35.6565(d) (2) and to retain copies of all cost or price analyses conducted and other CA records in accordance with the requirements of Title 40 CFR § 35.6705(b).	Per existing CDPHE policy, all federally funded contracts are to include requirements to comply with Federal and State procurement regulations and guidance. CDPHE developed specific procedures for CM/GC contracts whereas CDPHE and its engineer will conduct an analysis to determine the reasonableness of the low-cost proposal whenever the contractor receives less than three bids.	Implemented on February 6, 2015.
3	Require CDPHE to implement written controls and procedures to ensure that the date, time and place of all bid openings are designated in all future RFPs as required by of State of Colorado Procurement Rule R-24-103202a-08 (b).	Per existing CDPHE policy, all federally funded contracts are to include requirements to comply with Federal and State procurement regulations and guidance. CDPHE now includes specific notice that "the contractor shall provide written notice of bid due dates, times and location for drop-off; and bid opening date, time and location in all announcements for post-award procurements. All bid openings are to be open to the public for viewing."	February 6, 2015
4	Require CDPHE to implement written controls and procedures to ensure that language is included in all future bid proposals and contracts as required by Title 40 CFR Part 35, Subpart O.	CDPHE inadvertently omitted the reference to Subpart O out of their Federal Requirements Exhibit. It is now included in the "Federal Requirements Exhibit – Rev 12 – 2013 form provided in RFPs.	December, 2013
5	Require CDPHE to modify the CMGC and A/E contracts awarded under the CA to include the 10-Year Records Retention language as required by Title 40 CFR § 35.6705(b) and the contract language requirement under Title 40 CFR § 35.6550.	CDPHE inadvertently omitted the reference to the 10-year records retention language and other contract language of Subpart O out of their Federal Requirements Exhibit. The contract template is now modified with the inclusion of the "Federal Requirements Exhibit – Rev 12 – 2013 form provided in RFPs.	December, 2013