



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Memorandum Report

Review of Hotline Complaint Regarding Technical Assistance Grant No. 1-97025201 Awarded to the Basin Cleanup Coalition, Coeur d'Alene, Idaho

Report No. 2004-P-00010

March 25, 2004

Report Contributors:

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

OFFICE OF
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MEMORANDUM

SUBJECT: Report No. 2004-P-00010
Review of Hotline Complaint Regarding Technical Assistance Grant
No. 1-97025201 Awarded to the
Basin Cleanup Coalition
Coeur d'Alene, Idaho

FROM: /s/ *Robert K. Adachi* for
Michael A. Rickey
Director for Assistance Agreement Audits

TO: L. John Iani
Regional Administrator
EPA Region 10

On July 23, 2003, the Environmental Protection Agency (EPA) Office of Inspector General (OIG) received a complaint in connection with a technical assistance grant (TAG) awarded to the Basin Cleanup Coalition (Coalition), Coeur d'Alene, Idaho. The complainant alleged that the grant violated TAG requirements and that the Coalition was a "front"¹ for the Coeur d'Alene Chamber of Commerce (Chamber). In particular, the complainant alleged that:

- The TAG was approved even though the Coalition did not have any members or a board of directors;
- The Coalition was not a tax exempt organization approved by the Internal Revenue Service; and
- The Coalition is a creation of the Chamber.

The purpose of our review was to address the allegations made in the complaint and to determine whether the Coalition was qualified to receive grant funds under the TAG regulations outlined in

¹ In the complaint, the following statement was made concerning the Coalition: "This is nothing but a front for the Chamber who is promoted by mining polluters, politicians and anti-superfund site advocates."

40 Code of Federal Regulations (CFR) Part 35.4000, and the general grant regulations outlined in 40 CFR Part 30.

We have no objection to the public release of this report. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the position of the OIG and the findings contained in this report do not necessarily represent the final EPA position. Final determinations on matters in this audit report will be made by EPA managers in accordance with established audit resolution procedures.

Results in Brief

Based on our review, the Coalition (1) was not a qualified TAG recipient because of the potential conflicts of interest as defined in 40 CFR 30.42, and (2) did not meet the minimum administrative and management capability requirements required by the CFR. The Coalition did not have a sufficient membership to have a Board of Directors and, as a result, was unable to enter into contracts to hire a technical advisor as required under the TAG. Also, the Coalition was not eligible as a TAG recipient since it did not obtain tax exempt status. Further, we found that the Coalition's intent was to enter into a contract with the Chamber that would have allowed the Chamber to act as the grant administrator, and since the Coalition's incorporator was also the Chamber's President and General Manager, this could have created a conflict of interest as defined in 40 CFR 30.42. The Coalition also did not have an accounting or procurement system as required by 40 CFR 35.4020 (a)(2), 40 CFR 30.21, and 40 CFR 30.44.

The results of the review were discussed with EPA Region 10 representatives on November 13, 2003. As a result of the meeting, on December 5, 2003, the Region notified the Coalition that the TAG grant was being terminated. The quick response by the Region has resulted in \$50,000 in Federal funds being put to better use, as well as the resolution of an improper award. To ensure that future TAG grantees comply with Federal requirements, we recommend that the Region improve its post award grant procedures to verify the assurances given on grant applications.

Background

Grant No. 1-97025201 was awarded on April 24, 2003, and approved \$25,000 in partial funding, with total project costs of \$62,500. The total Federal share of the project was to be \$50,000, with the Coalition providing \$12,500 of matching funds. The purpose of the grant was to fund the hiring of a technical advisor to assist the communities affected by the Superfund cleanup in the Coeur d'Alene River Basin in understanding and participating more fully in the cleanup process. The Basin covers four counties in Idaho and Washington State. The grant had a project and budget period from May 1, 2003, to July 31, 2004.

Review of Hotline Allegations

The TAG was approved even though the Coalition did not have any members or a board of directors.

As of October 29, 2003, the Coalition had nine members, of which only two had paid their membership dues, consisting of:

- two members from Shoshone County, Idaho
- four members from Kootenai County, Idaho
- three members from Spokane County, Washington

There were no members from Benewah County, Idaho.

Consequently, the Coalition did not have a board of directors, since it did not have a sufficient membership from each of the four counties to elect a board based upon its by-laws. According to Article III, Section 2 of the Coalition's by-laws:

The members of Basin Clean up Coalition shall elect a twelve member Board of Directors. There will be 3 Board members elected from each of the four counties in the Basin (Shoshone, Benewah, Kootenai and Spokane Counties). The Directors from each county must be members in good standing of the Basin Clean-up Coalition and reside in the county. Board members will be elected solely by the Coalition members residing in the County the Board member wishes to represent.

Without a board of directors, the Coalition was unable to enter into any contracts to hire a technical advisor, as required under the terms and conditions of the grant.

The Coalition was not a tax exempt organization approved by the Internal Revenue Service.

The Coalition was not designated as a tax exempt organization as defined in Section 501(c)(3) of the Internal Revenue Code. Under 40 CFR 35.4045, the Coalition was required to be a nonprofit organization before it could receive money. Although the Coalition was incorporated in the State of Idaho, the Coalition did not obtain its nonprofit tax exemption. Therefore, the Coalition was not eligible to receive funds under the TAG. We were told that the Coalition did not intend to obtain the tax exempt designation unless the Coalition was assured of its continued existence and was able to operate the grant.

The Coalition is a creation of the Coeur d'Alene Chamber of Commerce.

While we could not determine whether the Coalition was the "creation" of the Chamber, the Coalition and the Chamber do have common characteristics. The Coalition incorporator is also

the President and General Manager of the Chamber. The Coalition and the Chamber share the same address.

Of greater significance was the intent of the Coalition to enter into a contract with the Chamber that would have enabled the Chamber to act as the grant administrator in spite of the Region's notification that such an arrangement was prohibited. On June 11, 2003, the TAG grant Project Officer notified the Coalition that the Chamber could not administer the grant and that the Coalition would need to hire a grant administrator. Also, we believe that there would be a conflict of interest since the Coalition incorporator and the Chamber's President and General Manager are the same individual. Title 40 CFR 30.42 defines the conflict of interest as:

... No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. (Emphasis added) Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for award.

On October 29, 2003, Coalition representatives advised us that they still intended to have the Chamber administer the grant, and did not agree that any real or apparent conflicts of interest existed.

Compliance with General Grant Regulations

The Coalition did not meet the minimum administrative and management capability requirements of 40 CFR 35.4020 (a)(2), 40 CFR 30.21, and 40 CFR 30.44. In particular, the Coalition did not have an accounting system or procurement system, despite assurances in its grant application that the systems were in place. In the grant application dated December 12, 2002, the Coalition completed the Survey of Recipient's Management Systems. In the survey, the Coalition stated that it had:

- established project accounting records to record the applicable grant costs;
- responded affirmatively to all other questions relating to their accounting system;
- established a time distribution system, supported by employee timecards;
- established formal travel procedures;
- established formal procurement procedures, including controls to assure that unacceptable contract types are not utilized; and
- responded affirmatively to all other questions relating to their procurement system.

On October 29, 2003, the Coalition provided the following response to OIG inquiries concerning the Coalition's accounting and procurement practices:

There are no accounting and procurement practices per se for the BCC since it is coming into existence. My assumption has been that we would utilize procurement procedures required by the EPA. Accounting will be done

according to Generally accepted accounting procedures for non profit organizations which we (the Chamber) uses [sic] for our books and for those of other associations which we manage.

In spite of the assurances given in their grant application, the Coalition did not have the accounting or procurement systems in place as required under 40 CFR 35.4020 (a)(2), 40 CFR 30.21, and 40 CFR 30.44. Title 40 CFR 35.4020 (a)(2) requires TAG grantees meet the minimum administrative and management requirements found in 40 CFR 30.21. Title 40 CFR 30.21 outlines the standards for financial management systems required of all grant recipients. Title 40 CFR 30.44 outlines the procurement procedures required of all recipients.

To ensure that future TAG recipients comply with Federal regulations, the Region needs to improve its award procedures for newly formed organizations. In particular, the Region should use advanced monitoring procedures, as outlined in EPA Order 5700.6, *Policy on Compliance, Review and Monitoring*, on all newly formed grant recipients. Advanced monitoring is the process by which a recipient's compliance with applicable administrative and financial statutes, regulations, conditions, and policies is evaluated. This can take place through the use of on-site or off-site evaluations. This is significant for TAG grantees, since the TAG program allows potential grantees to be newly formed organizations. Such organizations may not have the administrative and management capability at the time of grant award that is usually found in established nonprofit organizations. To protect the Government's interest, the Region needs to perform either an on-site evaluation or a desk review prior to making an award to newly formed grantees. If problems are noted, the Region could withhold the grant award until corrective action is complete or include special award conditions.

Recommendation

We recommend that the Regional Administrator follow national policy for management of awards to new recipients. Presently, EPA's draft policy requires using advanced monitoring, as outlined in EPA Order 5700.6, on newly formed grantees, prior to the grant award.

Since Region 10 and the Coalition agreed to our suggestion to terminate the grant by mutual consent, no recommendation on that issue is necessary.

Region 10 Response and OIG Comments

We issued a draft report to the Region on February 3, 2004. The Region provided a response on March 8, 2004. A copy of the Region's response is included as Appendix A of this report. The exit conference with the Region was on March 9, 2004.

The Region agreed with the need to perform advanced monitoring on newly formed grantees but not within the recommended 60 day timeframe mentioned in the draft report. The timing of such reviews is the subject of draft national policy currently under development and the Region wants

to be consistent with national grant policy. We agree with the Region and reworded our recommendation accordingly. For applicants without prior Federal awards, as was the case for the Coalition, the draft policy will require the Region to perform administrative and programmatic reviews before the grant award.

The Region stated that it would implement the new policy through a memorandum to the TAG project officers and the Grants Unit Manager which would be provided to the OIG by March 31, 2004. During the exit conference, it was agreed that Region would withhold the issuance of the memorandum pending guidance from EPA Grants Administration Division.

The Region also questioned our conclusion that the Coalition was not eligible under 40 CFR35.4045 because it was not designated as a tax exempt organization under the Internal Revenue Code. We understand the question and believe that the regulation is confusing. State law describes the requirements for incorporation and can vary from state to state. The term “nonprofit” refers to the tax status for certain types of organization and is controlled by U.S. Internal Revenue Code and not state law. Since the regulation requires that an eligible TAG recipient “must incorporate as a nonprofit corporation,” the recipient must meet the requirements of both the incorporating state and the Internal Revenue Code.

Scope and Methodology

We conducted this review from September 5, 2003, through January 30, 2004. Our review was conducted in accordance with the attestation standards outlined in Chapter 6 of the *Government Auditing Standards*. A review is substantially less in scope than an examination, the objective of which is the expression of an opinion. Accordingly, we do not express such an opinion. To accomplish our objectives, we:

- conducted interviews with the complainant and the Coalition;
- reviewed relevant documentation provided by the complainant and the Coalition;
- reviewed the Region’s grant files and project officer files; and
- conducted interviews with regional personnel involved with the grant.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 120 calendar days of the date of this report. We have no objections to the further release of this report to the public. 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. For your convenience, this report will be available at <http://www.epa.gov/oig/publications.htm>.

If you or your staff have any questions regarding this report, please contact me at (312) 886-3037 or Robert Adachi at (415) 947-4537.

Region 10 Response



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

Reply To
Attn Of: RA-140

Mr. Michael Rickey
Director for Assistance
Agreement Audits
Office of the Inspector General
US EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3507

Re: Grant No. 1-97025201/Basin Cleanup Coalition

Dear Mr. Rickey:

We have reviewed the draft report regarding the technical assistance grant awarded to the Basin Cleanup Coalition. EPA Region 10 concurs with comment to the recommendation: “the Regional Administrator, EPA Region 10, improve post award procedures by performing Advance Monitoring, as outlined in EPA Order 5700.6, on newly formed grantees, within 60 days of the grant award.”

Region 10 recently submitted our plan for post-award monitoring to EPA Headquarters. The FY 2004 Regional Plan encourages each program office to provide post award monitoring for all newly formed grantees, and by doing so, this provides early and effective guidance to the grantees. Therefore, we are in full agreement with the recommendation that the newly formed technical assistance grant recipients be subject to post award monitoring. However, in light of ongoing national policy making regarding non-profit organizations and pending recommendations from the General Accounting Office (GAO) to EPA regarding the timing of post award monitoring, we suggest that the timing of the monitoring not be restricted to within 60 days of award. Instead, we propose that the Region conduct post award monitoring after the first draw down of funds by the grant recipient. We will review this policy when national guidance and GAO recommendations are finalized to ensure that we are consistent with those recommendations.

Region 10 will adopt the recommendation to perform advanced monitoring for newly formed organizations which received CERCLA technical assistance grants (TAGs). This policy will be implemented through a memorandum to the TAG project officers and the Grants Unit Manager. A copy of this memorandum will be provided to the OIG by March 31, 2004 to fulfill this recommendation.

Accuracy:

1) Under the recommendations section, the draft report states that EPA terminated the grant. The grant was terminated by mutual consent of the grantee and EPA on 11/25/03.

2) Under the review of Hotline Allegations, the report states that the grantee had not obtained tax exempt status and therefore was not eligible to receive funds under the TAG program. The TAG regulations at 40 C.F.R. 35.4045 specifically refer to filing incorporation papers for non-profit status with the appropriate state agency, and make no mention of obtaining IRS 501(c)(3) (tax exempt) status. Region 10 has shared this concern with the national TAG program.

Thank you for this opportunity to comment. If you should have any questions, please contact Marianne Deppman Acting Community Relations and Outreach Unit Manager at 206-553-1237.

Sincerely,

L. John Iani
Regional Administrator

cc: Robert Adachi, IG auditor
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