

**TESTIMONY OF NIKKI L. TINSLEY
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BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES
AND THE ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES
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Good morning, Mr. Chairman and members of the subcommittee. I am Nikki Tinsley, Inspector General for the United States Environmental Protection Agency. Thank you for inviting me here today to update you on the work we have done reviewing EPA's administration of assistance agreements; also known as grants.

Assistance agreements are a primary means EPA uses to carry out its mission of protecting human health and the environment. More than half of EPA's fiscal 2002 budget was awarded to organizations outside the Agency through assistance agreements. EPA primarily awards assistance agreements to State, local, and tribal governments; universities; and nonprofit organizations. Because the amount is large, approximately \$4.7 billion dollars, and it's the primary mechanism EPA uses to fulfill its mission, it is imperative that the Agency use good management practices in awarding and overseeing these agreements to ensure they contribute cost effectively to attaining environmental goals.

EPA's management of assistance agreements has been an area of emphasis for the Inspector General's office for many years. In fact, we have been issuing reports and raising concerns about EPA's management of assistance agreements for over ten years. In 1996, my predecessor testified before Congress that many of our audits found recipients were not fulfilling the objectives of their agreements or complying with procurement regulations, and that EPA needed to improve its oversight of recipients. In 1999, I testified before this Committee that many of the same problems discussed in 1996 still existed. Audits were still finding that grantees were not providing the required products and services, and EPA was not adequately monitoring grantee performance. In addition to our audit work, we have also conducted a number of investigations related to the improper and illegal activities of some EPA grantees.

Our grants management work has focused on crosscutting national issues and has included grants made to States, local and tribal governments, and not-for-profit organizations. We have looked at EPA's major program areas, in EPA headquarters and in EPA Regions. We designed our issue area plan, which consisted of a series of individual audits similar to pieces fitting together in a puzzle, to identify systemic problems that were preventing the Agency from achieving the maximum results from the billions of dollars awarded in assistance agreements every year.

Since 1996, EPA has reported management of assistance agreements as a material or agency weakness under the Integrity Act. From 1996 through 1998, EPA reported oversight of assistance agreements and grants closeout as a material weakness, and in 1999 reported that the material weakness had been corrected. In 2000, EPA reported “Validation of Corrective Actions to Improve Oversight of Assistance Agreements” as an agency level weakness. In 2001, management of assistance agreements continued to be an agency level weakness. In 2002, the OIG recommended to EPA that management of assistance agreements be elevated to a material weakness because (a) our reports had found that the problems were of a systemic nature, and (b) corrective actions EPA was taking had not been effective. However, EPA chose to keep it as an agency weakness.

In May 2001, the OIG reported that EPA did not have a policy requiring program officials to competitively award discretionary assistance funding. EPA had done little to promote competition, and often did not provide adequate justifications for not using competition to award grants. Assistance agreements were awarded without competition based on the project officer’s opinion that the recipient was uniquely qualified. There was no documented evidence that no other organizations existed that could perform the desired work. We also found that EPA was not performing a widespread solicitation for assistance agreements. Without wide spread solicitation, EPA limited the potential applicants and created the appearance of preferential treatment. Without competition, EPA cannot have confidence that it is funding the best products based on merit and cost-effectiveness to achieve environmental objectives and accomplishing its mission with a reasonable return on the taxpayer’s investment.

EPA has taken some corrective actions to address our recommendations for better managing assistance agreements. Most recently, the Administrator has issued two orders to implement new changes. The Policy on Competition in Assistance Agreements was issued September 2002, and the Policy on Compliance, Review, and Monitoring in December 2002. As a result of enhanced monitoring, EPA requested the OIG conduct financial audits of three recipients where significant issues were identified. EPA has also prepared a grants management plan to identify future improvements. The challenge for EPA now will be to ensure that staff implement, and are held accountable for, following the new policies and for implementing the new grants management plan. Many of the deficiencies we found were due to EPA staff not following policies or being held accountable when they did not.

EPA’s lack of review and oversight of the awarding and performance of assistance agreements has other consequences. We continue to find systemic problems in how EPA reviews assistance agreements prior to award, and oversees assistance agreements after they are awarded. Our financial audits of some grant recipients found examples of improper procurement methods, apparent conflicts of interest, and the use of grants to circumvent contracting. I will briefly discuss some of the findings in our recent grants management reports.

Pre-Award Reviews of Assistance Agreements

The OIG has issued several reports since 1998 reporting deficiencies in the EPA's review of assistance agreements prior to the award. Before EPA awards an assistance agreement, the EPA project officer must conduct a programmatic and technical review of the application package in order to select those applications that will contribute most effectively to EPA program objectives and priorities. A main focus of the project officer's review is the work plan, which should describe what will be done, when it will be accomplished, and estimated costs. The pre-award review is critical to ensure that the results of the assistance agreement will contribute to protecting human health and the environment.

In 1998, the OIG issued a report stating that project officers were not always negotiating work plans with well-defined commitments or adequately determining and documenting that costs for the assistance agreement were reasonable. In March 2002, the OIG reported that EPA was awarding assistance agreements without identifying expected outcomes, quantifying outputs, linking outputs to funding, or identifying milestone dates for completing work products.

In a report issued on March 31, 2003, we reported that project officers did not perform all necessary steps when conducting pre-award reviews. For this audit, we selected a statistical sample of 116 assistance agreements awarded by the Office of Air and Radiation, Office of Water, and related regional offices. We found:

- EPA awarded \$700,000 without knowledge of the work the recipient was going to perform. The work plan did not have clear objectives, milestones, deliverables, or outcomes. The recipient stated in the work plan: "Because of the exploratory nature of these activities and the need to bring together various market players, exact deliverables and schedule will be determined based on what participants tell us they want from our project."
- In 79 percent of the sampled assistance agreements over \$100,000, project officers did not document cost reviews of proposed budgets. For example, a recipient was awarded \$1.3 million to operate its air pollution control program without determining the reasonableness of the proposed costs to the expected benefits of the projects.
- In 42 percent of the sampled assistance agreements, EPA did not negotiate environmental outcomes. For example, EPA awarded a recipient \$200,000 to regulate costs charged by power companies. The work plan contained no environmental outcomes, and stated that specific projects would be identified at a later date. In fact, the work plan itself only provided possible activities, and stated specific projects would be established later. The project officer wrote on the application, "why this, why now?" yet still approved the work plan.

Without complete pre-award reviews of proposed projects there was insufficient assurance that the funded projects would accomplish program objectives or desired environmental results. There was also insufficient assurance that proposed costs were reasonable, and that recipients were technically capable of performing the work. EPA may also have lost the opportunity to fund other projects that would have better achieved its mission.

Oversight of Assistance Agreements

OIG reports continue to find that improvements are needed in EPA oversight of assistance agreements after they are awarded. In 1995, we found that EPA staff were not making site visits, timely processing financial status reports, obtaining or reviewing required audit reports, or ensuring that final reports were completed. In 2002, we followed up on EPA's progress in improving oversight and found that weaknesses continued to exist. While EPA had developed policies and training to improve the oversight of assistance agreements, it did not ensure that the policies were followed consistently.

OIG reports continue to identify examples of EPA staff not adequately overseeing recipients of assistance agreements awarded to states for environmental programs and non-profit organizations for specific projects.

- A March 2002 report found that 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 prices, from the most qualified firms. Recipients were not competing contract awards or performing cost or price analysis as required by the regulations. For example, a non-profit recipient awarded two sole source contracts to its for-profit subsidiary. The recipient also awarded sole source contracts to three for-profit companies created by its for-profit subsidiary. The recipient entered into 23 contracts, 20 of which were awarded sole source. As a result, we questioned \$1.3 million of costs claimed.

In another instance, a recipient awarded two contracts, valued at \$907,000, to an engineering firm without adequate competition. The engineering firm had solicited and prepared the assistance agreement application and wrote both contracts on behalf of the recipient. The engineering firm also performed other services, valued at \$140,000, such as presenting seminars, preparing mailing lists, and hosting a golf day and lake awareness day. This occurred despite EPA policy that project officers ensure assistance agreement recipients make procurements in accordance with Federal regulations.

- A February 2003 report found that EPA Region 6's oversight of Louisiana was insufficient and could not assure the public that Louisiana was protecting the environment. We initiated this review because EPA had received petitions from citizen groups to withdraw the National Pollutant Discharge Elimination System water program, the Resource Conservation and Recovery Act hazardous waste program, and the Title V air permit programs for Louisiana. Region 6 leadership (1) did not develop and clearly communicate a vision and measurable goals for its

oversight of the State or emphasize the importance of consistently conducting oversight, (2) did not hold Louisiana accountable for meeting goals and commitments, and (3) did not ensure that data of poor quality was corrected so that it could be relied upon to make sound decisions. As a result, EPA was unable to assure the public that Louisiana was operating programs in a way that effectively protected human health and the environment. In their response EPA Region 6 said it would implement its new oversight protocol for use beginning in FY 2005.

Improved Accountability Needed

The deficiencies in EPA's pre-award reviews and post-award oversight were not due to the lack of policies, but rather existing policies and guidance were not always followed. EPA policies and guidance identify the reviews EPA staff are to perform prior to and after assistance agreements are awarded. However, EPA staff did not always follow the policies and were not held accountable when they did not do so.

- The project officer function is often a collateral duty for EPA staff. In some instances, the performance agreements and position descriptions did not identify project officer responsibilities. Even when the performance agreement identified the individual as a project officer, the agreement did not reference specific project officer duties such as determining the programmatic and technical merit of a project or conducting cost reviews.
- Senior Resource Officials (SRO) did not emphasize the importance of post award monitoring. SROs are charged with strengthening Agency-wide fiscal resources management. They are typically Deputy Assistant Administrators or Assistant Regional Administrators. These officials stated that the level of post award monitoring was affected by the limited availability of resources for staffing, travel, and training.

If EPA is to improve its management of assistance agreements, it needs to ensure that adequate resources are devoted to the function and that management and staff are held accountable for adhering to Agency policies that promote good management of assistance agreements.

Insufficient EPA Review and Oversight Contributed to Recipient's Problems

Recent audits of two recipients show how EPA's lack of review and oversight can contribute to problems for the grantee. We found instances where the procurement process was circumvented which ends up costing the taxpayer more to procure the same goods and services.

- We questioned \$1.7 million in costs claimed because a recipient did not have an adequate time distribution system and indirect cost rate as required by EPA regulations. The EPA project officer focused his oversight on the technical performance of the recipient, with little emphasis on business and administrative aspects of the recipient's performance. The grants specialist did not respond to repeated requests from the recipient for assistance in developing the indirect cost rate. Further, the project officer did not conduct an onsite review of the recipient until almost six years after the first award.
- We questioned \$1.6 million in costs claimed by another recipient for, among other things, improper procurement. The recipient did not competitively procure equipment and services, and did not perform cost or price analysis for the purchases. Furthermore, procuring goods and services for State agencies is not an authorized use of the funds provided under Section 103 of the Clean Air Act. EPA staff contributed to the problem when it wrote the sole source justification and scope of work for the contract. The justification for the sole source procurement was the EPA staff's familiarity with the contractor and the work that needed to be performed. EPA policy specifically prohibits employees from directing a recipient to award a contract to a specific individual or firm or participate in the negotiation of an award of a contract under an assistance agreement.
- We issued an adverse opinion on all costs claimed of \$603,895 under an assistance agreement because the recipient had an inadequate financial management system. The recipient did not meet cost sharing requirements, had an inadequate timekeeping and labor distribution system, and submitted late or incomplete progress and financial reports.

The OIG is not alone in its conclusion that management of assistance agreements is an area of concern for EPA. As stated earlier, EPA has identified one or more aspects of the management of assistance agreements as an Agency level or material weakness for several years beginning in 1996. Most recently, in its 2002 annual report, EPA acknowledged that further improvements were needed and identified management of assistance agreements as an Agency level weakness. In January 2003, GAO also identified improving grants planning and management as a major management challenge for EPA.

EPA's management of assistance agreements directly relates to two government-wide initiatives in the President's Management Agenda; improving financial performance, and integrating budget with performance. Improvements in the review of assistance agreement budgets prior to award, and monitoring of recipient activities and costs after the award, will reduce payments for costs that are not allowable under Federal regulations. Requiring work plans that clearly identify expected outcomes and deliverables and monitoring recipients' progress in implementing the work plan will help ensure that assistance agreements achieve desired results and contribute to EPA's mission.

I am proud of the efforts the OIG staff have made in bringing these issues to light, and I thank you, Mr. Chairman and members of the Committee, for the opportunity to participate in a discussion of such an important topic. We are committed to working with Congress and EPA to ensure that the money awarded every year through assistance agreements is producing the intended environmental and public health benefits.

This concludes my prepared remarks, and I will be happy to respond to questions.