U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Site Visit Report

American Recovery and Reinvestment Act Site Visit of the Denver Street Storage Project, City of Astoria, Oregon

Report No. 11-R-0172

March 22, 2011

Report Contributors: Eileen Collins
Jessica Knight
Michael Owen

Abbreviations

CWSRF	Clean Water State Revolving Fund
FTE	Full-Time Equivalent
OAR	Oregon Administrative Rule
ODEQ	Oregon Department of Environmental Quality
OMB	Office of Management and Budget

Cover photo: Denver Street Storage Project under construction at the City of Astoria, Oregon. (EPA OIG photo)

U.S. Environmental Protection Agency
Office of Inspector General

11-R-0172
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At a Glance

Catalyst for Improving the Environment

Why We Did This Review

The U.S. Environmental Protection Agency's Office of Inspector General conducts site visits of American Recovery and Reinvestment Act of 2009 (Recovery Act) clean water and drinking water projects. We selected a project for the City of Astoria, Oregon, for review.

Background

The city is constructing an underground storage tank, an odor control facility, and a sanitary sewer pipeline as part of its Denver Street Storage Project. The project is funded by two Clean Water State Revolving Fund loans totaling $7,475,436 from the Oregon Department of Environmental Quality (ODEQ). One of the loans provided $4,000,000 in Recovery Act funds, of which 50 percent of the loan principal will be forgiven if the city complies with the loan agreement.

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

The full report is at:
www.epa.gov/oig/reports/2011/20110322-11-R-0172.pdf

American Recovery and Reinvestment Act Site Visit of the Denver Street Storage Project, City of Astoria, Oregon

What We Found

We conducted an unannounced site visit of the Denver Street Storage Project in the City of Astoria, Oregon, during June 2010. As part of our site visit, we toured the project, interviewed city representatives and contractor personnel, and reviewed documentation related to Recovery Act requirements.

We did not identify any compliance issues with Buy American, Davis-Bacon Act, or funding requirements. However, we found that:

- The city and ODEQ understated the number of jobs created or retained with Recovery Act funds. Although the construction work performed for the 6-month period ending June 30, 2010, was 100 percent funded by the Recovery Act, the city and ODEQ reported only 62 percent of the full-time equivalent jobs created or retained in the quarterly reports.

- For one of four contracts awarded, a change order did not meet applicable procurement requirements. During removal of a tank, additional contamination was discovered that resulted in the original award of $9,960 being increased to $67,306, a difference of $57,346. The increase required the city to award a new competitive contract, but it did not do so.

What We Recommend

We recommend that Region 10's Regional Administrator require ODEQ to require the city to correct the reported number of jobs created or retained, obtain the corrections for the reported number of jobs created or retained from the city and maintain the corrected documentation in administrative records, and submit corrections to the federal government. We also recommend that Region 10's Regional Administrator require ODEQ to disallow $57,346 in costs incurred under the change order unless the city is able to show that the costs meet applicable Oregon requirements.

Region 10 and ODEQ agreed with recommendations 1, 2, and 4, but initially had concerns with recommendation 3. The city agreed with all four recommendations. After discussing the recommendations during the exit conference, the region agreed with recommendation 3 and ODEQ concurred with the corrective action.

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

THE INSPECTOR GENERAL

March 22, 2011

MEMORANDUM

SUBJECT: American Recovery and Reinvestment Act Site Visit of the Denver Street Storage Project, City of Astoria, Oregon
Report No. 11-R-0172

FROM: Arthur A. Elkins, Jr.
Inspector General

TO: Dennis McLerran
Regional Administrator, Region 10
U.S. Environmental Protection Agency

This is our report on the subject site visit conducted by the Office of Inspector General of the U.S. Environmental Protection Agency (EPA). The report summarizes the results of our site visit of the Denver Street Storage Project in the City of Astoria, Oregon, funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act).

We performed this site visit as part of our responsibility under the Recovery Act. The purpose of our site visit was to determine whether the city is in compliance with selected requirements of the Recovery Act pertaining to the Clean Water State Revolving Fund Program. The Oregon Department of Environmental Quality approved the city's project. The city received $7,475,436 through two Clean Water State Revolving Fund loans for the project. One of the two loans provides $4,000,000 in Recovery Act funds.

The estimated direct labor and travel costs for this report are $158,833.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days, or on June 20, 2011. You should include a corrective action plan for agreed-upon actions, including milestone dates. Your response will be posted on the Office of Inspector General's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of section 508 of the Rehabilitation Act of 1973, as amended. The final response

should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal. We have no objection to the further release of this report to the public. This report will be available at http://www.epa.gov/oig.

If you or your staff have any questions regarding this report, please contact Melissa Heist, Assistant Inspector General for Audit, at (202) 566-0899 or heist.melissa@epa.gov; or Robert Adachi, Product Line Director, at (415) 947-4537 or adachi.robert@epa.gov.

Table of Contents

Appendices

Purpose

The purpose of our unannounced site visit was to determine whether the City of Astoria, Oregon, complied with selected requirements of the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (Recovery Act), pertaining to the Clean Water State Revolving Fund (CWSRF) program.

Background

The city is constructing an underground storage tank, an odor control facility, and a sanitary sewer pipe as part of its Denver Street Storage Project. The project is funded by two CWSRF program loans totaling $7,475,436 from the Oregon Department of Environmental Quality (ODEQ). One of the two loans provided $4,000,000 in Recovery Act funds. Fifty percent of this loan will be forgiven if the city complies with the loan agreement.

Scope and Methodology

Due to the time-critical nature of Recovery Act requirements, we did not perform this assignment in accordance with generally accepted government auditing standards. Specifically, we did not perform certain steps that would allow us to obtain information to assess the city's internal controls and previously reported audit concerns. As a result, we do not express an opinion about the adequacy of the city's internal controls or the city's compliance with all federal, state, or local requirements.

We conducted an unannounced site visit at the city from June 8 to 10, 2010. During our site visit, we limited the scope of our review to the following steps:

1. Toured the project.
2. Interviewed city and contractor personnel.
3. Reviewed documentation maintained by the city and its contractors to assess compliance with:
    a. Buy American requirements under Section 1605 of the Recovery Act.
    b. Davis-Bacon Act wage requirements under Section 1606 of the Recovery Act.
    c. Funding requirements under Section 1604 of the Recovery Act.
    d. Reporting requirements under Section 1512 of the Recovery Act.
    e. Contract procurement requirements.

Results of Site Visit

Our site visit did not identify any compliance issues with Buy American, Davis-Bacon Act, or funding requirements. However, we found that: (1) the city's and ODEQ's reporting for jobs created or retained was not accurate; and (2) a change order for one of four contract awards by the city for the project did not comply

with Oregon's procurement requirements. The results of our site visit are summarized below.

Buy American Requirements

We did not identify any compliance problems relating to the Buy American requirements. We obtained an understanding of the procedure used for ensuring that the material used complied with Buy American requirements. We also obtained Buy American certifications for manufactured products we observed during the site visit. The certification information indicated that major materials observed on the project met the requirements.

Davis-Bacon Act Requirements

We did not identify any compliance problems relating to the Davis-Bacon Act requirements. Under the loan agreement, contractors are required to pay employees the higher of the Davis-Bacon Act or Oregon Bureau of Labor and Industries prevailing wage rates. We compared the applicable wage requirement for each employee of the construction contractor with each employee's wage as reported on the certified payroll for the pay periods ending May 6, 2010, and June 13, 2010. The review showed that the contractor paid employees the higher of the Davis-Bacon Act or Oregon Bureau of Labor and Industries wage rates as required under the loan agreement.

Funding Requirements

We did not identify any compliance problems relating to funding limitations of the Recovery Act. We reviewed the city's loan documentation and inspected the project to ensure that the city complied with section 1604 of the act, which states that no Recovery Act funds can be used for any casino, other gambling establishment, aquarium, zoo, golf course, or swimming pool. Our review and site visit found that the city was in compliance with section 1604.

Reporting Requirements

We found that the city and ODEQ understated the number of jobs created or retained with Recovery Act funds. Section 1512 of the Recovery Act requires quarterly reporting of the number of jobs that were created and retained as a result of Recovery Act funds. Although the construction work performed on the project during the period January 1, 2010, to June 30, 2010, was 100 percent funded by the Recovery Act, the city and ODEQ reported only 62 percent of the full-time equivalent (FTE) jobs created or retained by the funding in the quarterly reports. For example, the city and ODEQ reported 13.4 FTE jobs created or retained for the period April 1, 2010, to June 30, 2010. However, our review of the city's supporting records identified that 21.6 FTE jobs created or retained should have been reported for the quarter ending June 30, 2010.

The number of jobs created or retained was understated because ODEQ staff incorrectly interpreted Office of Management and Budget (OMB) guidance on Recovery Act reporting. OMB Recovery Act guidance specifies that estimated jobs created or retained are to be calculated based on the proportion of work hours funded by the Recovery Act. According to city and ODEQ staff involved in Recovery Act reporting, the number of jobs reported as created or retained was calculated based on the percentage of the construction contract for the project funded by the Recovery Act. Based on this methodology, the city applied a 62 percent Recovery Act funding level to calculate the number of jobs created and retained. Our discussions with ODEQ staff identified that they believed their reporting methodology was in compliance with the OMB Recovery Act guidance, and they had advised the city to use the methodology. However, their reporting methodology did not comply with OMB's guidance because 100 percent rather than 62 percent of the construction work hours were funded by the Recovery Act during the 6-month period ending June 30, 2010. The city and ODEQ should have reported 100 percent of the FTE jobs created or retained with Recovery Act funding during this period as specified by the OMB guidance.

OMB's Recovery Act guidance requires that recipients of Recovery Act funding maintain corrections to erroneous and missing data submitted in prior quarterly reports in their administrative records. The guidance also requires that recipients submit the corrections to the federal government at a time to be specified in the future.

Contract Procurement

As of the time of our site visit in early June 2010, the city had awarded four contracts for the project. These four contracts consisted of: (1) construction, (2) architectural and engineering, (3) testing and inspection, and (4) tank removal and site restoration. The Oregon Administrative Rules (OARs) establish the procurement requirements applicable to these four awards. The city complied with the applicable procurements requirements specified by the OARs, with the exception of a change order for the tank removal and site restoration contract.

Although the initial contract award for the tank removal and site restoration was awarded in accordance with OAR 137-049-0160, the city's subsequent change to the contract did not comply with this OAR. OAR 137-049-0160 establishes criteria and requirements for competitive intermediate procurements, including change orders. This rule allows awards estimated to not exceed $100,000 to be made based on obtaining at least three competitive quotes and using selection criteria that may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility, and similar factors. The initial award was based upon three competitive quotes and lowest price.

During the removal of the tank, additional soil contamination and ground water contamination was discovered. As a result, the city issued a change order that increased the contract price above the maximum threshold allowed. Under OAR 137-049-0160(6), price increases for contracts awarded through the intermediate procurement process cannot exceed 50 percent of the original contract price. The original award was for $9,960, and the city's change order increased the costs incurred under the contract to $67,306. Therefore, the change order increased the price by $57,346, or by more than 575 percent. The city was required to award a new competitive contract.

According to the city, it issued the change order because it did not have the time to pursue the competitive award process. The city explained that the contamination was required to be addressed quickly because of right-of-way and potential emergency issues. The city said that the excavated area where the tank and some contamination were removed represented a potential emergency because it was an "attractive nuisance" to the public.

Although the city considered the contamination area to pose a potential emergency, the city did not declare an emergency and comply with the emergency procurement process specified by OAR 137-049-0150. This OAR establishes the criteria and process for awarding emergency contracts. The OAR requires a written declaration. The OAR also specifies that the contracting agency ensure competition that is reasonable and appropriate under the emergency circumstances, and may include written requests for offers, oral requests for offers, or direct appointments without competition in cases of extreme necessity.

We were unable to determine whether the increase in the contract price was fair and reasonable because the city did not comply with OAR 137-049-0160 or OAR 137-049-0150. As a result, the state should disallow $57,346 in costs incurred under the change order for funding provided by the CWSRF loans unless the city is able to show that the costs meet applicable OAR procurement requirements.

Recommendations

We recommend the Region 10 Regional Administrator require that ODEQ:

1. Require the City of Astoria to correct the reported number of jobs created or retained using a methodology that complies with OMB's Recovery Act guidance for quarterly reports covering the 6-month period ending June 30, 2010, and all subsequent periods with job reporting errors.

2. Obtain the corrections for the reported number of jobs created or retained from the City of Astoria and maintain the corrected documentation in administrative records.

3. Submit the corrections referenced in recommendation 2 for the City of Astoria to the federal government after a schedule has been established by future Recovery Act guidance.

4. Disallow $57,346 in costs incurred under the change order for funding provided by the CWSRF loans unless the City of Astoria is able to show that the costs meet applicable OAR procurement requirements.

Agency, Recipient, and Subrecipient Responses to Draft Report

We issued a discussion draft on February 23, 2011. Although not requested, Region 10 submitted formal written comments to the findings and recommendations in response to the discussion draft on March 2, 2011. We also held an exit conference on March 3, 2011, with the region, ODEQ, and city to obtain their verbal comments on the discussion draft. Based on the discussion of the recommendations and corrective actions during the exit conference, the region provided revised formal written comments on March 11, 2011. ODEQ provided documentation to support that actions were being taken to address the recommendations on February 25, March 2, and March 3, 2011. The city also provided documentation showing corrective actions taken on February 7 and March 8, 2011. The region's complete revised written response is in appendix A. The documentation provided by ODEQ and the city is not included in the report; however, it is available on request.

The region, ODEQ, and city agreed with the findings. The region also agreed with recommendations 1, 2 and 4, but initially had concerns with implementing recommendation 3. OEDQ agreed with recommendations 1, 2, and 4. However, ODEQ expressed concern with recommendation 3. The city agreed with all four recommendations.

The region commented in its written response that the final report should recognize the prompt actions by ODEQ and the city resolving recommendations 1, 2, and 4. With regard to recommendation 3, the region commented that current OMB guidance does not provide a mechanism to revise previous job reporting entries that were incorrect. The region said recommendation 3 made sense, but is dependent upon action by OMB at an uncertain future date. As a result, the region said it would like to explore with OIG the best way the final report should note this action so that the city, ODEQ, and the region can satisfy the recommendation definitively and avoid being reported as delinquent in timely carrying out the corrective action. After discussing the recommendations during the exit conference, the region agreed with all four recommendations. The region also agreed to include a corrective action for recommendation 3 in the response to the final report. The region said that the response to the final report would disclose that ODEQ will submit the corrections for the quarterly reports if and when OMB establishes a schedule for reporting adjustments to address recommendation 3.

ODEQ agreed with recommendations 1, 2, and 4, and provided documentation that it said addressed the recommendations. In response to recommendation 3, ODEQ commented that the recommendation would be difficult to address. However, ODEQ concurred with the corrective action wording that the region said would be in its response to the final report to address the recommendation.

Although the city agreed with the findings and recommendations, the city orally commented that it was expecting to see further discussion on actions already taken to address the findings. The city said that it understands that these actions will be included in the final report. The city also stated that corrective actions have been taken. Therefore the city said it does not see any outstanding issues and requested that that be reflected in the final report.

OIG Comment on Responses

The documentation provided by ODEQ and the city during February and March 2011 shows that the city and ODEQ have expeditiously taken actions to address the findings. The documentation shows that the city has corrected the job reporting errors in accordance with OMB's Recovery Act guidance and ODEQ has obtained the corrected job numbers. These corrective actions satisfactorily address recommendations 1 and 2. The documentation provided by ODEQ on March 2, and 3, 2011, shows that ODEQ has disallowed the $57,346 in costs incurred under the change order for funding provided by the CWSRF loans. Therefore, ODEQ's corrective action satisfactorily addresses recommendation 4. No further action is required by EPA, ODEQ, or the city for recommendations 1, 2, and 4.

The region's planned corrective action for recommendation 3 satisfactorily addresses the recommendation. The region will need to include the corrective action in its response to the final report.

With regard to the city's comment that it was expecting to see further discussion on actions already taken to address the findings in the discussion draft, the city informed us of the actions on February 3 and 7, 2011. We appreciate that the city and state expeditiously initiated corrective actions after we briefed them on the findings and potential recommendations. We did not review and evaluate these corrective actions during February 2011 because the discussion draft was written and undergoing our review process by February 1, 2011. Therefore, the corrective action information was provided too late for incorporation into the discussion draft. As a result, we reviewed documentation supporting the corrective actions as part of the discussion draft response process.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in $000s)	
Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	4	Require ODEQ to require the City of Astoria to correct the reported number of jobs created or retained using a methodology that complies with OMB's Recovery Act guidance for quarterly reports covering the 6-month period ending June 30, 2010, and all subsequent periods with job reporting errors.	C	Region 10 Regional Administrator	03/08/11		
2	4	Require ODEQ to obtain the corrections for the reported number of jobs created or retained from the City of Astoria and maintain the corrected documentation in administrative records.	C	Region 10 Regional Administrator	03/08/11		
3	5	Require ODEQ to submit the corrections referenced in recommendation 2 for the City of Astoria to the federal government after a schedule has been established by future Recovery Act guidance.	O	Region 10 Regional Administrator	06/22/11		
4	5	Require ODEQ to disallow $57,346 in costs incurred under the change order for funding provided by the CWSRF loans unless the City of Astoria is able to show that the costs meet applicable OAR procurement requirements.	C	Region 10 Regional Administrator	03/03/11	$57.3	$57.3

[1] O = recommendation is open with agreed-to corrective actions pending
C = recommendation is closed with all agreed-to actions completed
U = recommendation is undecided with resolution efforts in progress

Appendix A

Agency Response to Draft Report

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
WATER AND WATERSHEDS

March 11, 2011

MEMORANDUM

SUBJECT: American Recovery and Reinvestment Act Site Visit to Astoria, Oregon, Project No. OA-FY10-0158

FROM: Mike Bussell /S/
Director, Office of Water & Watersheds

TO: Robert Adachi
Director of Forensic Audits
OIG

The Region 10 Office of Water and Watersheds appreciates the opportunity to review the Discussion Draft Site Visit Report to the Denver Street Storage Project in Astoria, Oregon (No. OA-FY10-0158). This project is funded in part by the American Recovery and Reinvestment Act (ARRA) through the EPA Clean Water State Revolving Fund (CWSRF) and Oregon Department of Environmental Quality's (DEQ's) Water Pollution Control Revolving Fund. This Discussion Draft reports two findings, an error in reporting the jobs created or retained through ARRA funding, and a change order that did not meet applicable procurement requirements.

It is worth noting that the OIG reviewed the multiple facets of ARRA compliance. They found no issues regarding compliance with Buy American requirements, Davis-Bacon Act wage requirements, and Funding under Section 1604 of ARRA.

We have reviewed the report's findings regarding the error in reporting jobs created or retained by the ARRA funding and the change order related to the tank removal. We agree with both findings.

In the months since the OIG investigators first informed us of these potential errors, DEQ and the City of Astoria have taken steps to remedy the two situations. DEQ recognizes the State's error in interpreting the OMB guidance when advising Astoria on the appropriate jobs calculation methodology. Should OMB allow communities to revise previous entries, Astoria

will make the change. Under current OMB guidance, there is no mechanism to revise previous entries.

Astoria recognized that the change order, issued upon discovery of additional soil and ground water contamination, is not adequately supported for reimbursement by DEQ through the CWSRF. Astoria has rescinded their request for payment and neither the CWSRF, DEQ's Revolving Fund, nor ARRA currently fund this questionable change order.

The OIG Discussion Draft contains four Recommendations. The Final Report should recognize the prompt actions by DEQ and Astoria that make three of the Recommendations moot.

The first recommended action is that the City of Astoria correct the number of jobs reported in June 2010 and subsequent reporting periods. The City corrected their calculation of jobs created and retained for these periods once the proper interpretation of the OMB guidance was brought to their attention. This action has been completed.

The second recommended action is for the correct number of jobs created or retained to be kept in the administrative records. This has been completed as well.

The third recommended action would have Astoria submit the correction to jobs created or restored when new guidance makes it possible. This makes sense to do. However, we note that complying with this recommendation is dependent upon action by OMB at an uncertain future date. We would like to explore with OIG the best way the final report should note this action so that the City of Astoria, DEQ, and Region 10 can satisfy the recommendation definitively and avoid being reported as delinquent in carrying out this action in a timely manner.

The fourth recommended action is for DEQ and EPA to disallow the costs incurred under the change order. This has been addressed through DEQ processing Astoria's request to rescind these costs and EPA's notification of an erroneous payment. No further action is needed by EPA or DEQ.

If you have any questions about this response, please feel free to contact me or Michelle Tucker, our CWSRF coordinator, at tucker.michelle@epa.gov (206-553-1414).

cc: Bob Phillips, Audit Coordinator

Appendix B

Distribution

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