



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 Water System Improvement Project, Waleska, Georgia

Report No. 11-R-0193

March 29, 2011



**Report Contributors:**

Jean Bloom  
Iantha Maness  
Snehal Nanavati

**Abbreviations**

|       |  |
|-------|--|
| CFR   | Code of Federal Regulations                |
| DWSRF | Drinking Water State Revolving Fund        |
| EPA   | U.S. Environmental Protection Agency       |
| GEFA  | Georgia Environmental Facilities Authority |
| OIG   | Office of Inspector General                |

**Cover photo:** Water system improvement site, Waleska, Georgia. (EPA OIG photo)



# At a Glance

*Catalyst for Improving the Environment*

## Why We Did This Review

The U.S. Environmental Protection Agency, 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 the project in the City of Waleska, Georgia, for review.

## Background

The city received loans totaling \$615,000 from the Georgia Environmental Facilities Authority. These loans included \$386,610 of Recovery Act funds distributed through the Drinking Water State Revolving Fund program (\$246,000 for principal forgiveness and a \$140,610 loan).

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/2011/20110329-11-R-0193.pdf](http://www.epa.gov/oig/reports/2011/20110329-11-R-0193.pdf)

## ***American Recovery and Reinvestment Act Site Visit of Water System Improvement Project, Waleska, Georgia***

### **What We Found**

We conducted an unannounced site visit of the water system improvement project in the City of Waleska, Georgia, in March 2010. As part of our visit, we toured the project site; interviewed city representatives, representatives of the city's engineering firm, and prime and subcontractor personnel; and reviewed documentation related to Recovery Act requirements.

We found no ongoing construction activity during our site visit. Prior to our visit, the city and the State of Georgia determined that the prime contractor was violating contract terms and issued a stop-work order. Therefore, we were unable to perform all of the required procedures necessary to determine compliance with the requirements for subrecipients of Recovery Act funds.

During our review, we found the city did not execute written contracts for engineering, inspection, and legal services, and did not prepare a cost or price analysis for its engineering services. However, we found no applicable federal, state, or local requirements that require the city to execute written contracts or prepare a cost or price analysis. Without federal, state, and local cost principles and procurement standards, we do not have reasonable assurance that Recovery Act funds are awarded and distributed in a prompt, fair, and reasonable manner, and that funds are used for purposes of the act. We plan to address this issue in a separate report to the Agency.

Based upon our review, we found no other problems that would require action from the city, the State of Georgia, or the U.S. Environmental Protection Agency.



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

THE INSPECTOR GENERAL

March 29, 2011

**MEMORANDUM**

**SUBJECT:** American Recovery and Reinvestment Act Site Visit of  
Water System Improvement Project, Waleska, Georgia  
Report No. 11-R-0193

**FROM:** Arthur A. Elkins, Jr.  
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is written over the printed name.

**TO:** Gwen Keyes Fleming  
Regional Administrator, Region 4

This is our report on the subject site visit conducted by the Office of Inspector General of the U.S. Environmental Protection Agency. The report summarizes the results of our site visit of the City of Waleska's Water System Improvement Project.

We performed this site visit as part of our responsibility under the American Recovery and Reinvestment Act of 2009 (Recovery Act). The purpose of our site visit was to determine the city's compliance with selected requirements of the Recovery Act pertaining to the Drinking Water State Revolving Fund program. The city received loans totaling \$615,000 from the Georgia Environmental Facilities Authority. These loans included \$386,610 of Recovery Act funds distributed through the Drinking Water State Revolving Fund program—\$246,000 for principal forgiveness and a \$140,610 loan.

The estimated direct labor and travel costs for this report are \$98,532.

**Action Required**

Because this report contains no recommendations, you are not required to respond to this report. The report will be made available at <http://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](mailto:heist.melissa@epa.gov); or Robert Adachi, Product Line Director, at (415) 947-4537 or [adachi.robert@epa.gov](mailto:adachi.robert@epa.gov).

# *Table of Contents*

---

|  |   |
|--|---|
| <b>Purpose</b> .....   | 1 |
| <b>Background</b> .....  | 1 |
| <b>Scope and Methodology</b> .....                                     | 1 |
| <b>Noteworthy Achievements</b> .....                                   | 2 |
| <b>Results of Site Visit</b> .....                                     | 2 |
| Buy American Requirements.....   | 2 |
| Wage Rate Requirements.....  | 3 |
| Financial Management and Reporting.....                                | 3 |
| Contract Procurement.....  | 3 |
| <b>Other Matters</b> .....   | 3 |
| <b>Agency and Recipient Comments</b> .....                             | 4 |
| <b>OIG Response</b> .....  | 4 |
| <b>Status of Recommendations and Potential Monetary Benefits</b> ..... | 6 |

## **Appendices**

|   |    |
|---|----|
| <b>A</b> <b>Region 4 Comments on the Draft Report</b> .....         | 7  |
| <b>B</b> <b>State of Georgia Comments on the Draft Report</b> ..... | 8  |
| <b>C</b> <b>Distribution</b> .....                                  | 12 |

## **Purpose**

The purpose of our unannounced site visit was to determine the City of Waleska, Georgia's, compliance with the requirements for subrecipients of American Recovery and Reinvestment Act of 2009 (Recovery Act) funds under the Drinking Water State Revolving Fund (DWSRF) program.

## **Background**

The city entered into a loan agreement under the DWSRF program for water system improvements along the Georgia Highway 140 water line. The city received loans totaling \$615,000 from the Georgia Environmental Facilities Authority (GEFA). These loans included \$386,610 of Recovery Act funds distributed through the DWSRF program—\$246,000 for principal forgiveness and a \$140,610 loan.

Construction at the site began on February 22, 2010. The city issued a stop-work order on March 2, 2010, because the prime contractor had not obtained prior approval for a subcontractor as required by its contract and the State of Georgia. Under the contract, all subcontractors must be approved by the city and meet Minority/Women Business Enterprise requirements. The work was stopped, in part, to allow time for the subcontractors to be approved so that funding for the project would not be jeopardized.

The city provided the prime contractor an opportunity to become compliant. However, both the city and the state believed the contractor failed to make a good-faith effort to become compliant. In the letter dated April 23, 2010, the city informed the prime contractor that it was terminating the contract, effective May 7, 2010.

## **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 any previously reported audit concerns. As a result, we do not express an opinion on the adequacy of the city's internal controls or compliance with all federal, state, or local requirements.

We conducted our site visit during the week of March 22, 2010. During our visit, we:

1. Toured the project
2. Interviewed city representatives, representatives of the city's engineering firm, and prime and subcontractor representatives
3. Reviewed documentation maintained by the city or its contractors on the following matters:
  - a. Buy American requirements under Section 1605 of the Recovery Act
  - b. Wage rate requirements under Section 1606 of the Recovery Act
  - c. Financial Management and Reporting Requirement under Section 1512 of the Recovery Act
  - d. Contract procurement

Because the stop-work order was issued within 2 weeks of construction start, minimal work had been performed at the site. As of April 28, 2010, no contractor or subcontractor billings were submitted, and the city had not submitted any Recovery Act reporting on this project.

## **Noteworthy Achievements**

We acknowledge the action taken by the city and the State of Georgia to issue a stop-work order when a violation of contract terms was observed. This action prevented any additional funds from being expended.

## **Results of Site Visit**

Based on the limitations, we were unable to perform all the required procedures necessary to determine the city's compliance with the requirements for subrecipients of Recovery Act funds.

The results of our procedures and other matters noted during our site visit are summarized below.

### ***Buy American Requirements***

Buy American requirements were contained in the construction contract and both the prime contractor and the city were aware of the requirements. During our visit, we noticed pipes on-site and requested supporting documentation from the contractor, the city, and the engineering firm to determine whether the pipes were made in America. We found no evidence to suggest that the pipes were not made in America. However, since we did not observe the actual pipes installed in the ground, and the site inspector could not attest that the installed pipes met the Buy American requirements, we are unable to conclude whether the Buy American requirement has been satisfied.

Minimal construction occurred prior to the issuance of the stop-work order. As a result, no supporting documentation (vendor invoices, site inspector certificates, or reports to the State of Georgia) was available for review.

### ***Wage Rate Requirements***

The prime contractor, the subcontractor, and the city were aware of the wage rate provisions of the Recovery Act. The prime contractor gave copies of its certified payroll records to the city to show its compliance. We are unable to conclude whether the wage rate requirements were met because there was no ongoing construction at the time of our visit, and we were unable to interview employees to verify their qualifications and wages.

### ***Financial Management and Reporting***

We are unable to conclude whether financial management and reporting requirements have been met under this project. As of the date of our site visit, no billings or reimbursement requests had been made.

### ***Contract Procurement***

The construction contract was competitively awarded based on public advertisement. The city received eight bids and, based on the recommendation of its engineering firm, awarded the contract to the lowest bidder. Unsuccessful bidders confirmed their participation in the bidding process. We did not identify any unfair bidding practices.

## **Other Matters**

We found the city did not execute written contracts for engineering, inspection, and legal services, and did not prepare a cost or price analysis for its engineering services. Section J of the GEFA Drinking Water State Revolving Loan Fund Operating Agreement with U.S. EPA Region 4 states that procurement actions are not subject to EPA procurement regulations of 40 CFR Part 31 but are subject to procurement requirements of the state or any more stringent requirements of the local recipient. Based on our review of the loan agreement between the city and GEFA, and correspondence with the State of Georgia, we found no applicable federal, state or local requirement for the city to execute written contracts for professional services or prepare a cost or price analysis for its engineering services. We requested that the State of Georgia and the city provide their applicable regulations. The city informed us it does not have any written procurement regulations, and the state informed us it was not aware of any state regulation pertaining to the procurement of professional services.

Under EPA's Recovery Act Plan, recovery act funds must be awarded and distributed in a prompt, fair, and reasonable manner, and funds must be used for



purposes of the act. Without applicable federal, state and local cost principles and procurement standards, reasonable assurance cannot be provided that these expectations are being met.

## **Agency and Recipient Comments**

The Office of Inspector General (OIG) received comments on the draft report from Region 4 on November 5, 2010, and from GEFA on November 8, 2010. We held an exit conference on November 11, 2010. The draft report contained two recommendations requesting that Region 4 suggest that the city strengthen internal controls by executing written contracts and preparing cost or price analysis for engineering and inspectional services on future awards.

EPA Region 4 generally agreed with the report findings, and suggested that our first recommendation to execute written contracts be directed to GEFA as they do not have the authority to carry out the recommendation. Region 4 suggested the elimination of the second recommendation, to prepare a cost or price analysis for engineering and inspectional services on future awards. Although the Agency did not disagree that a cost and price analysis is a good practice, no applicable statute, regulation, policy or SRF operating agreement provides the authority to implement the recommendation.

GEFA generally concurred with the report findings and suggested we clarify the State of Georgia's involvement in the issuance of the stop-work order. GEFA also suggested we revise the "Other Matters" section of the report, believing the report implies that current regulations for the procurement of engineering services nullifies the state's ability to provide reasonable assurance that funds are used for the purposes intended by the Recovery Act.

GEFA generally disagreed with our recommendation to execute written contracts because it does not wish to share responsibility for subrecipients' planning and management of their projects, and does not wish to interfere in project management processes. While GEFA supports sound business practices, it disagreed with the recommendation to prepare a cost price analysis for engineering and inspectional services because it believes that requiring all state revolving fund subrecipients to prepare a cost or price analysis for engineering services could prove a burden for small governments and water utilities.

## **OIG Response**

We modified the report to include the State of Georgia's involvement in the issuance of the stop-work order. We did not remove the "Other Matters" section of the report because we are concerned about the absence of state and local requirements to execute written contracts for professional services or prepare a cost or price analysis for its engineering services. However, we removed the recommendations contained in the discussion draft report since there are no city

or state requirements, and EPA's operating agreement with the State of Georgia states that procurement actions by the recipients are not subject to the 40 CFR Part 31.

We disagree with GEFA on certain comments made in response to our draft report. GEFA stated that it did not wish to share responsibility for subrecipients' management of their projects. We believe that GEFA has the responsibility to ensure that recipients of SRF funds are making decisions based upon sound business practices. To suggest that additional requirements such as preparing a written contract or ensuring a fair and reasonable price impose additional burdens on a community, regardless of size contradicts GEFA's support of sound business practices.

We plan to address the absence of federal, state, and local cost principles and procurement standards in another report to the Agency.

# **Status of Recommendations and Potential Monetary Benefits**

| RECOMMENDATIONS    |             |         |                     |                 |                               | POTENTIAL MONETARY<br>BENEFITS (in \$000s) |                     |
|--------------------|-------------|---------|---------------------|-----------------|-------------------------------|--|---------------------|
| Rec.<br>No.        | Page<br>No. | Subject | Status <sup>1</sup> | Action Official | Planned<br>Completion<br>Date | Claimed<br>Amount                          | Agreed-To<br>Amount |
| No recommendations |             |         |                     |                 |                               |  |                     |

<sup>1</sup> 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

## ***Region 4 Comments on the Draft Report***

November 5, 2010 Email

Thanks for the opportunity to comment on the discussion draft. Your e-mail was referred to me for comment on behalf of the SRF program.

First, we appreciate the IG's efforts in having a field presence in the review of some of the ARRA projects at the site location. We believe this is a valuable tool in the oversight of the massive ARRA program and will also assist EPA in closing any gaps in its SRF training for states and borrowers.

We are also encouraged that this small community took decisive action to address non-compliance by the construction contractor.

With respect to the recommendations on page 3 and 4 of the draft report, we would suggest that recommendation no. 1 be directed to the Georgia Environmental Facilities Authority (GEFA). EPA's relationship is with GEFA through the ARRA SRF capitalization grant, however EPA does not have a relationship with GEFA's borrowers and thus has no authority to carry out the recommendation. I have suggested to GEFA that they discuss the need for written engineering and legal contracts with Waleska. However, I am not familiar with Georgia procurement codes and whether they apply to municipalities or whether each municipality generates their own, so I do not know whether GEFA has the authority to carry out the recommendation either.

With respect to recommendation no. 2, we suggest that this be eliminated. While we do not disagree that cost or price analysis is a good practice, neither EPA nor GEFA has the authority to request something that is not required by the applicable statute, regulation, policy or SRF operating agreement.

## ***State of Georgia Comments on the Draft Report***



### MEMORANDUM

**To:** Robert Adachi, Director of Forensic Audits, US EPA - Office of Inspector General (OIG)  
Jean Bloom, Lead Auditor, US EPA - Office of Inspector General (OIG)

**From:** Kevin Kelly, Georgia Environmental Finance Authority

**Date:** November 8, 2010

**Re:** GEFA and EPD Comments on EPA OIG “American Recovery and Reinvestment Act Site Inspection of Water System Improvement, Waleska, Georgia (Project No. 2010-1225)”

**CC:** Gwen Keyes Fleming, Regional Administrator, US EPA Region 4  
Doris Ann Jones, Mayor, City of Waleska

---

#### **BACKGROUND**

On Thursday, November 4, 2010, the Georgia Environmental Finance Authority (GEFA) received an electronic copy of the U.S. Environmental Protection Agency Office of Inspector General’s (EPA OIG) draft report entitled, “Site Inspection Report: American Recovery and Reinvestment Act Site Inspection of Water System Improvement, Waleska, Georgia (Project No. 2010-1225).” EPA OIG conducted the site inspection referenced in the report in March 2010. In correspondence accompanying the draft report, the EPA OIG provided the city of Waleska and the State of Georgia two and a half business days to prepare these comments.

GEFA works closely with the Georgia Environmental Protection Division (EPD) in administering the Drinking Water and Clean State Revolving Fund (SRF) programs. Specifically, GEFA contracts with EPD to monitor SRF construction projects and to protect the overall integrity of the projects. In discharging these duties, EPD works closely with SRF sub-recipients to ensure compliance with procurement rules, Disadvantaged Business Enterprise regulations, Davis Bacon requirements, the Buy American provision and other applicable federal and state regulations and requirements.

These comments comprise the input of both GEFA and EPD.

## CONCURRING COMMENTS

GEFA and EPD concur with the following statements of fact and investigative conclusions in the EPA OIG's report:

1. **Financing Terms:** GEFA provided a total of \$615,000 of Drinking Water SRF – ARRA funding to the city of Waleska for water system improvements in the form of a low-interest loan with 70% principal forgiveness. GEFA concurs with the EPA OIG's breakdown of funds: \$246,000 in principal forgiveness and a \$140,601 loan.
2. **Stop Work Order:** The city of Waleska issued a stop-work order due to a violation of contract terms. The EPA OIG report acknowledges this as a "Significant Achievement" in its report. We concur that this stop-work order represents excellent compliance control.

In the wake of the stop work order, the contractor sought approval for the existing subcontractor. This effort failed and the contractor was allowed to vacate the contract. All of this was handled legally with the assistance of the City's attorney. Now, Waleska has properly procured the services of another contractor that appears to be working successfully to complete the project and comply with the ARRA requirements.

## SUGGESTED REVISIONS AND / OR CORRECTIONS

GEFA and EPD offer the following revisions and/or corrections to the investigative conclusions in the EPA OIG's report:

1. **Reasonable Assurances:**
  - a. On page three of the report, the EPA OIG states "EPA is required under the Recovery Act to ensure that funds are used for purposes of the act. Without cost principles and procurement standards, reasonable assurance cannot be provided that these expectations are being met."
  - b. While GEFA and EPD strongly support sound business practices, GEFA and EPD do not agree with EPA OIG's conclusion here. The EPA OIG report implies that the current regulation of the procurement of engineering services nullifies our ability to provide reasonable assurances that these funds are used for the purposes articulated in the recovery act. GEFA and EPD believe that monthly, on-site verification of construction for the project in accordance with approved construction contract documents and specific invoices for both construction and engineering services provide the State with reasonable assurance that funds are being used for purposes of the Act. EPA Region IV then reviews the state's process to ensure proper uses of funds.
  - c. The Waleska project provides a good example of this oversight function. EPD steadfastly refused to release any funds for work of the unapproved subcontractor on the Waleska project. We cite this as an example of our ability to provide "reasonable assurances" that the funds are being utilized for the intended purposes.

2. **Recommendation #1 – Written Agreements:**

- a. In the report, the EPA OIG states, "We recommend that the Regional Administrator, Region 4, request the City strengthen its internal controls by: (1.) Executing written contracts stipulating the services, responsibilities, and fees payable for the engineering, inspection, and legal services."
- b. GEFA and EPD recognize that EPA OIG has offered this as a recommendation to the Regional Administrator. With respect to the State's role concerning this issue, GEFA and EPD are not aware of a legal or regulatory basis for the State to apply new requirements to Waleska or any other SRF recipient. The EPA OIG report states, "Specifically, we found no applicable Federal, State, or local requirement for the City to execute written contracts for professional services or prepare a cost or price analysis for its engineering services." We concur; we find no such requirement in the law.
- c. Furthermore, we recognize that engineering consulting services represent part of an owner's process for planning, administration, and quality control. Project owners (sub-recipients) have legitimate reasons for maintaining continuity of services over time and to ensure the coordination of multiple projects. Some choose to stay with one consultant for long periods of time. Others select and use multiple consultants in a wide variety of ways to fit their needs. GEFA and EPD do not wish to share responsibility for sub-recipients' planning and management of their own projects, so we do not wish to interfere in their project management processes. We believe it is safe and proper to review the actual project - what the recipient has a contract to build and what we have a contract to fund. By GEFA policy and by loan contract, engineering services are only funded as a part of an actual construction project, and they are invoiced as such.
- d. In the case of Waleska, GEFA and EPD understand that Waleska has a written contract with the engineer (we have not confirmed that, since it is not part of our oversight activities). The contract is not specific to the ARRA project and is several years old. It provides for engineering services on an "as needed" basis. The consulting engineer has been the City's engineer for many years. This is an example of the situation described above, in which a City has a long term relationship with a consulting engineering. While it is not the only way to do business, we recognize that it offers several advantages: (1) It enables long term planning and continuity in capital improvements projects for small entities that do not otherwise have that expertise; (2) It eliminates the costs associated with the procurement of these services on a project by project basis; (3) It provides for ready access to these services in urgent-need situations; (4) It provides a resource for institutional memory regarding City infrastructure in an environment that does not promote this kind of retention.

3. ***Recommendation #2 – Cost Analyses:***

- a. In the report, the EPA OIG states, "We recommend that the Regional Administrator, Region 4, request the City strengthen its internal controls by: (2.) Preparing a cost or price analysis for engineering and inspection services on future awards."
- b. While GEFA and EPD support sound business practices, we believe a requirement for all SRF sub-recipients to prepare a cost or price analysis for engineering services could prove a burden for small governments and water utilities. The end result of such a requirement may be to force such borrowers to hire a consultant to estimate the cost of hiring a consultant.

4. ***Stop Work Order:***

- a. The EPA OIG report states that the stop work order prevented the expenditure of any "additional" ARRA funds. We suggest that the report clarify that the stop work order succeeded in preventing the expenditure of any ARRA funds for an unapproved subcontractor.
- b. The state reviewers, particularly Tom Roos and Gaynell Hill, made the correct determination in this situation under difficult conditions. We suggest that the report recognize the work the state reviewers did in addressing serious misbehavior by the sub-recipient's contractor.
- c. EPA OIG concludes that \$386,610 of recovery funds may potentially be available for use on recovery act projects. This project has been re-bid and construction is currently underway. These funds are not available for some other project. This contractor appears to be making a good effort to comply with all ARRA requirements.

Thank you for your consideration of our comments.



## ***Distribution***

Office of the Administrator  
Regional Administrator, Region 4  
Director, Grants and Interagency Agreements Management Division,  
Office of Administration and Resources Management  
Agency Followup Official (the CFO)  
Agency Followup Coordinator  
General Counsel  
Associate Administrator for Congressional and Intergovernmental Relations  
Associate Administrator for External Affairs and Environmental Education  
Audit Followup Coordinator, Region 4  
Public Affairs Officer, Region 4  
Mayor, City of Waleska, Georgia  
Senior Program Manager, Georgia Environmental Facilities Authority