



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Attestation Report

International City/County Management Association Reported Outlays Under Seven Selected Cooperative Agreements

Report No. 2007-4-00026

November 28, 2006

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Abbreviations

Agreements	CX82580501, CX82591101, CR82774301, X82857401, R82870801, TR83100101, and H183110901
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FAR	Federal Acquisition Regulations
FSR	Financial Status Report
NFBPA	National Forum for Black Public Administrators
NALGEP	National Association of Local Government Environmental Professionals
OIG	Office of Inspector General
OMB	Office of Management and Budget
Recipient/ICMA	International City/County Management Association



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

In response to a Grants Administration referral, we conducted this examination to determine whether (1) the reported outlays of \$9,871,025 fairly present the allowable costs incurred under the U.S. Environmental Protection Agency (EPA) cooperative agreements audited; and (2) the recipient managed its EPA cooperative agreements in accordance with applicable requirements.

Background

EPA awarded seven cooperative agreements to the International City/County Management Association (recipient) totaling \$9,916,441 for the following purposes: radon and indoor air pollution reduction and education; establishing the local government environmental assistance network; base closure and land reuse research; maintenance of the smartgrowth network; support of entities affected by hazardous waste sites, including brownfields conferences and research; and water security training.

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

To view the full report, click on the following link:
www.epa.gov/oig/reports/2007/20061128-2007-4-00026.pdf

International City/County Management Association Reported Outlays Under Seven Selected Cooperative Agreements

What We Found

In our opinion, the reported Federal outlays by the International City/County Management Association (recipient) on the *Financial Status Reports* do not present fairly, in all material respects, the allowable outlays incurred in accordance with the terms and conditions of the grants and applicable EPA regulations. We questioned \$1,007,858 of the \$9,871,025 in reported outlays because the recipient claimed unallowable outlays for contractual services, subgrant costs, indirect labor and facilities costs, and in-kind costs. Specifically, the recipient:

- Did not compete contracts, justify sole-source procurement, or perform cost analysis of contracts;
- Did not oversee or maintain documentation for subgrants;
- Did not maintain adequate documentation for in-kind costs used as recipient match; and
- Claimed indirect costs that were prohibited by law.

What We Recommend

We recommend that EPA: (1) disallow the questioned outlays of \$78,298 that were prohibited by law; (2) obtain sufficient documentation to support the remaining questioned outlays of \$929,560 in accordance with EPA regulations or disallow the costs from Federal grant participation; and (3) direct the recipient to establish procedures to address issues relating to procurement of contracts, management of subrecipients, and documentation of in-kind costs.



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

OFFICE OF
INSPECTOR GENERAL

November 28, 2006

MEMORANDUM

SUBJECT: International City/County Management Association
Reported Outlays Under Seven Selected Cooperative Agreements
Report No. 2007-4-00026

TO: Richard Kuhlman,
Director, Grants Administration Division

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determination on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

On July 21, 2006, we issued a draft report to the International City/County Management Association (Association) for comments. The Association responded and outlined numerous corrective actions completed or underway. The Association also submitted revised *Financial Status Reports* for three of the seven cooperative agreements being audited. The Association's response and the OIG's comments are included in Appendix C.

The estimated cost of this report – calculated by multiplying the project's staff days by the applicable daily full cost billing rates in effect at the time – is \$219,815.

Other Matters

In response to the draft report, the recipient indicated that under cooperative agreement CX82591101, the EPA program office was directly involved in setting up a consortium of team members (contractors). According to the recipient, EPA determined the scope of work, and the amount that would be available for each consortium member. Because of EPA's involvement in the contract awards, the recipient believed that there was no need to perform a price analysis because each of the consortium members was to receive the same amount (\$58,688 each). The EPA actions that the recipient described in its response is contrary to EPA policy, and may have caused the recipient to be in noncompliance with the procurement regulations in Title 40 Code of Federal Regulations (CFR) Part 30.

Another matter of concern is the indirect costs that the recipient claimed under cooperative agreement T83100101. EPA awarded the cooperative agreement under the authority of Section 104 (k) of the Comprehensive Environmental Response, Compensation, and Liability Act (Act). Section 104 (k) of the Act prohibits the use of any “part of a grant or loan” for the payment of an administration cost, and EPA has determined that prohibited administrative costs include “all indirect costs.”

Prior to the award of the cooperative agreement, the recipient indicated that it could not absorb all the unbillable indirect costs estimated at over \$200,000, and proposed to direct charge costs normally associated with recipient’s indirect costs pools and remove those costs from the indirect cost pool. EPA agreed with the recipient’s proposed method of direct charging and included special conditions in the cooperative agreement to allow the recipient to direct charge the costs for facilities, and performance and financial reporting, as long as the costs were excluded from the recipient's indirect cost pool(s).

EPA’s special grant conditions are in direct conflict with the provisions of Office of Management and Budget (OMB) Circular A-122, which are made applicable to nonprofit organizations by Title 40 CFR 30.27. Specifically, the provisions of OMB Circular A-122, Attachment B, Paragraph B(1) provide that a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstance, has been allocated to an award as an indirect cost. We contacted OMB about this matter, and were told that Federal agencies may not deviate from an OMB Circular without specific approval from OMB. We found no indication that EPA requested or OMB granted a deviation from the OMB requirements.

Action Required

In accordance with EPA Manual 2750, Chapter 3, Section 6(f), you are required to provide us your proposed management decision for resolution of the findings contained in this report before any formal resolution can be completed with the Association. Your proposed decision is due on March 28, 2007. To expedite the resolution process, please email an electronic version of your proposed management decision to reichard.keith@epa.gov.

We have no objections to the further release of this report to the public. For your convenience, this report will be available at <http://www.epa.gov/oig>. We want to express our appreciation for the cooperation and support from your staff during our review. If you have any questions about this report, please contact me at (202) 566-0847 or roderick.bill@epa.gov; or Keith Reichard at (312) 886-3045 or reichard.keith@epa.gov.

Sincerely,



Bill A. Roderick
Acting Inspector General

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Background

At the request of the U.S. Environmental Protection Agency (EPA), we audited seven cooperative agreements awarded to the International City/County Management Association (recipient) totaling \$9,916,441. The recipient is the professional and educational organization for chief appointed managers, administrators, and assistants in cities, towns, counties, and regional entities throughout the world. Since 1914, the recipient has provided technical and management assistance, training, and information resources to its members and the local government community. The recipient is a non-profit organization and has five geographical regions in the United States and a sixth region that includes all members outside of the United States. The following table provides some basic information about the authorized project periods and funds awarded under each of the seven agreements:

Cooperative Agreement	Award Date	EPA Share	Recipient's Share	Total Costs	Project Period
CX82580501	08/28/1997	\$ 539,991	\$ 35,000	\$ 574,991	09/17/1997 – 01/31/2003
CX82591101	08/28/1997	1,455,400	100,012	1,555,412	09/15/1997 – 09/14/2003
CR82774301	09/28/1999	1,086,895	57,204	1,144,099	10/01/1999 – 09/30/2004
X82857401	09/21/2000	680,745	0	680,745	08/01/2000 – 03/31/2005
R82870801	09/26/2000	3,241,382	128,493	3,369,875	10/01/2000 – 09/30/2005
TR83100101	06/06/2003	2,062,030	449,045	2,511,075	01/01/2003 – 03/04/2008
H183110901	07/07/2003	849,998	0	849,998	07/01/2003 – 06/30/2004
Total		\$ 9,916,441	\$769,754	\$10,686,195	

Source: OIG's summary of the recipient's cooperative agreements/amendments.

These cooperative agreements included a wide variety of activities on radon, indoor air quality, environmental contamination and land use, smart growth, water security, and brownfields. See **Appendix A** for details on each of the grants and the results from the grants.

To assist the reader in obtaining an understanding of the report, key terms are defined below:

- Reported Outlays:*** Program expenses or disbursements reported by the recipient on the Federal *Financial Status Reports*.
- Questioned Outlays:*** Claimed outlays or costs that are (1) contrary to a provision of a law, regulation, agreement, or other documents governing the expenditures of funds; or (2) not supported by adequate documentation.

Independent Auditor's Report

We have examined the total outlays reported by the International City/County Management Association (recipient) under the EPA cooperative agreements, as shown below:

Cooperative Agreement	<i>Financial Status Reports</i>			
	Date Submitted	Period Ending	Total Outlays Reported	Federal Share of Outlays Reported
CX82580501	08/03/2006	12/30/2002	\$ 574,991	\$ 539,991
CX82591101	10/11/2006	09/14/2003	1,555,412	1,455,400
CR82774301	03/03/2005	09/30/2004	1,104,235	1,061,764
X82857401	06/06/2005	03/31/2005	680,745	680,745
R82870801	10/11/2006	09/30/2005	3,369,874	3,241,381
TR83100101	08/01/2005	06/30/2005	1,752,468	1,480,165
H183110901	11/10/2004	06/30/2004	833,300	833,300
Total			\$9,871,025	\$ 9,292,746

Source: The sources of the reported outlays were the recipient's *Financial Status Reports*.

The recipient certified that the outlays reported on the *Financial Status Reports*, Standard Form 269A, were correct and for the purposes set forth in the agreements. The preparation and certification of the claims were the responsibility of the recipient. Our responsibility is to express an opinion on the reported outlays based on our examination.

Our examination was conducted in accordance with the *Government Auditing Standards* issued by the Comptroller General of the United States, and the attestation standards established for the United States by the American Institute of Certified Public Accountants. We examined, on a test basis, evidence supporting the reported outlays, and performed such other procedures as we considered necessary under the circumstances. We believe that our examination provides a reasonable basis for our opinion.

We questioned \$1,007,858 of the \$9,871,025 in reported outlays because the recipient claimed unallowable outlays for contractual services, subgrant costs, indirect labor and facilities costs, and in-kind costs.

In our opinion, because of the effects of the questioned outlays discussed in the preceding paragraph, the reported Federal outlays on the *Financial Status Reports* do not present fairly, in all material respects, the allowable outlays incurred in accordance with the terms and conditions

of the grants and applicable EPA regulations. Details of our examination are included in the **Results of Examination** and supporting schedules that follow.

Janet Kasper /s/
Office of Inspector General
U.S. Environmental Protection Agency
November 28, 2006

Results of Examination

We questioned outlays of \$1,007,858 because the recipient claimed unallowable costs for contractual services, subgrant costs, indirect labor and facilities costs, and in-kind costs. The questioned outlays are summarized below and detailed in the supporting schedules.

Cooperative Agreement	Reported Outlays	Questioned Outlays	Amount Due EPA	Schedule
CX82580501	\$ 574,991	\$ 58,184	\$ 58,184	1
CX82591101	1,555,412	304,530	304,530	2
CR82774301	1,104,235	111,633	118,792	3
X82857401	680,745	59,677	59,677	4
R82870801	3,369,874	68,135	68,135	5
TR83100101	1,752,468	405,121	375,302	6
H183110901	833,300	578	578	7
Total	\$9,871,025	\$1,007,858	\$985,198	

Sources: The sources of the reported outlays were the recipient's *Financial Status Reports*. The source of the questioned outlays and amounts due EPA was the OIG analysis of reported outlays.

The recipient's internal controls were not sufficient to ensure that reported outlays complied with Federal regulations, as required. These weaknesses and the resulting questioned outlays are described in the following paragraphs; details on questioned outlays for each agreement are included in **Schedules 1 through 8**.

Improper Procurement

The recipient could not demonstrate that it had obtained fair and reasonable prices when purchasing goods and services. Consequently, we questioned contract outlays of \$466,198 as unallowable.

The recipient is required under the provisions of Title 40 Code of Federal Regulations (CFR) 30.43 to purchase goods and services using open and free competition to the maximum extent practical. To ensure that all purchases made, whether on a competitive or noncompetitive basis, are fair and reasonable, the recipient is required under the provisions of Title 40 CFR 30.45 to conduct some form of cost or pricing analysis and document the analysis in the procurement file. To ensure compliance with the procurement regulations in Title 40 CFR Part 30, the recipient is required by Title 40 CFR 30.21(b) and 30.53(b) to maintain records that detail the history of each purchase.

The recipient awarded 12 contracts valued at \$466,198 (see **Schedule 8**) without documenting that fair and reasonable prices were obtained. The recipient awarded all 12 contracts on a sole-source basis, and did not provide adequate documentation to support that cost or pricing analyses were conducted, as required by Title 40 CFR 30.45.

Eleven of the 12 contracts questioned were under the small purchase threshold of \$100,000. EPA’s purchasing guidance provides that recipients can use an informal method for purchasing the supplies, equipment, and services. The guidance provides that the recipient should review catalogs or contact three or four organizations which can provide goods or services meeting the recipient’s needs and obtain price quotes. The recipients should select the lowest priced item or service which meets the recipient’s requirements. The recipient is responsible to keep files of the purchase(s), including the list of organizations contacted and prices of each. Obtaining quotes and selecting the lowest priced item satisfies the cost or price analysis requirement of Title 40 CFR 30.45. However, the recipient did not obtain quotes for the services provided. Instead the services were purchased on a sole source basis. Since price quotes were not obtained, a price analysis could not be conducted. In cases where recipients purchase goods and services using non-competitive negotiation, EPA guidance provides that recipients must conduct a cost analysis. However, the recipient could not demonstrate that cost analyses were conducted.

One of the 12 contracts questioned was valued at \$114,374; the recipient did not have documentation, as required by Title 40 CFR 30.46, to support: (1) the basis of contractor selection, (2) the justification for lack of competition, and (3) the basis for award cost or price. Also, the recipient could not provide copies of negotiated contract agreements. Without the negotiated contract agreements, there is no way to determine the scope of work or financial terms of the contract.

In responding to the draft report, the recipient identified various reasons for its purchasing methods, including existing contractual or partnering relationships, contractors being uniquely qualified, and EPA direction in selecting contractors, as detailed in Appendix C. However, without adequate competition or the documentation necessary to support that fair and reasonable prices were obtained, we have questioned contract outlays of \$466,198.

Unsupported Subgrants

The recipient did not adequately oversee subgrants or maintain documentation during the award and performance phase to support the award, activities, and costs claimed under the subgrants. Therefore, there was no evidence that the recipient was adequately monitoring and managing the subgrants. Without such information, there was no assurance that the reported outlays were fair and reasonable. As a result, we questioned \$84,917 in subgrant outlays claimed on two grants.

Agreement	Type of Subrecipients	Costs Category	Outlays Claimed
X82857401	Non-profit	Contractual	\$59,677
CX82580501	Local government	Other costs	25,240
Total			\$84,917

Source: The recipient’s books and records.

Office of Management and Budget (OMB) Circular A-110 requires recipients that issue subawards to manage and monitor the subawards. Subrecipients that are non-profit organizations are responsible for following the requirements of OMB Circular A-110 in managing their awards. Subrecipients that are local governments are responsible for following the provisions of Title 40 CFR Part 31 in managing their awards. Both regulations require reporting on the progress of activities and use of funds.¹

For agreement X82857401, the recipient awarded 14 subgrants to non-profit organizations for \$59,677. The subgrant award documents were not prepared contemporaneously when the awards were issued. The recipient retroactively prepared and negotiated the subgrant awards after the subgrants had been issued, funds advanced, and performance made. In addition, the recipient could not provide required evidence of managing and monitoring the subawards during the performance phase, including progress reports, financial reports, or other followup on the work product resulting from the subgrant. In responding to the draft report, the recipient stated that it believed that due to the nature of the grants it was not necessary to receive financial or program status reports from the grantee. The only followup necessary was to ascertain that the publications were produced and distributed.

For agreement CX82580501, the recipient awarded 24 subgrants to local governments totaling \$25,240. While the recipient maintained some documentation for these subgrants, it did not have:

- Award documents for 20 of the subgrants.
- Application information for 5 of 24 subgrants.
- Documentation supporting followup for 10 of 24 subgrants.
- Progress or financial reports for any of the subgrants.

In responding to the draft report, the recipient stated that it did not require financial or performance reports. In addition, in its grant application, the recipient stated that the subgrants were to be awarded for between \$300 and \$700; however, the subgrants ranged from \$870 to \$1,500.

Unallowable Indirect Other Costs

We questioned unallowable indirect facilities and indirect labor outlays of \$78,298 claimed under agreement TR83100101. These outlays are unallowable under: (1) Section 104 (k) of the Comprehensive Environmental Response, Compensation, and Liability Act (Act); and (2) the agreement's special conditions.

Agreement TR83100101 was awarded under Section 104 (k) of the Act. The Act prohibits the use of any "part of a grant or loan" awarded under Section 104 (k) of the Act for the payment of an administration cost. EPA has determined that prohibited administrative costs include "all indirect costs."

¹ OMB Circular A-110, sections 51(b) and 52; Title 40 CFR Parts 31.40(b)(1) and 31.41(b).

Prior to the award of the grant, the recipient indicated that it could not absorb all the unbillable indirect costs estimated at over \$200,000, and proposed to direct charge costs normally associated with recipient's indirect costs pools and remove those costs from the indirect cost pool (overhead). EPA agreed with the recipient's proposed method of direct charging and included special conditions in the agreement to allow the recipient to direct charge the costs for facilities, and performance and financial reporting, as long the costs were excluded from the recipient's indirect cost pool(s).

EPA's special conditions are in conflict with the provisions of OMB Circular A-122, which are made applicable to nonprofit organizations by Title 40 CFR 30.27. Specifically, the provisions of OMB Circular A-122, Attachment B, Paragraph B(1) provide that direct costs are those that can be identified specifically with a particular final cost objective, such as a particular award, project, service, or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstance, has been allocated to an award as an indirect cost. The Circular provides that OMB may grant exceptions to the requirements of this Circular when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

The recipient did not comply with the special conditions when it claimed program and administrative costs under the Brownfields grants, and included the same costs in the indirect cost pool. The recipient did not remove the program and administrative costs from the indirect cost pool because removing them would have caused them to be in noncompliance with OMB Circular A-122. In responding to the draft report, the recipient indicated that it claimed the \$78,298 of indirect costs because it was specifically authorized to do so by the special conditions in the agreement. However, the special grant conditions only allow for direct costs for facilities and performance and financial reporting when the costs are not included in the recipient's indirect costs pool(s).

Based on the above, the \$78,298 amount is unallowable in accordance with the Act and the agreement's special conditions.

Unallowable and Unsupported In-Kind Costs

We questioned \$378,445 of the \$578,279 in donated in-kind outlays claimed because the recipient did not provide adequate documentation to support the donated in-kind services. Five of the agreements required the recipient to provide a cost share or match. To meet the cost sharing requirements under the agreements, the recipient claimed donated in-kind services from other organizations.

In order to support in-kind costs for salaries of donated services from third parties, the recipient asked for and received confirmations from third party participants. The third party participants were asked to confirm: (1) the hours contributed to the project, and (2) the "hourly value of *their* in-kind commitment (hourly rate plus fringe)." The third party confirmation identified total hours spent in capacities such as speaker, moderator, discussion leader, poster presenter, or planner. The confirmations also included hours for attending the conferences or workshops. The

confirmations were prepared up to 6 years after the services were donated, and the donated hours ranged from 2 to 320 hours. No documentation, such as time sheets or personnel activity reports, was provided with the confirmations to identify and support the dates worked and the activity being performed by date.

Title 40 CFR 30.23(h)(5)(i) provides that volunteer services shall be documented and, to the extent feasible, supported by the same method used by the recipient for its own employees. The recipient's employees are required by OMB Circular A-122, Attachment B, paragraph 7(m) to maintain personnel activity reports. Therefore, the donated services should be supported with personnel activity reports which identify the dates the services were donated and the activity being performed.

The donated services included time for individuals attending the conferences or workshops, as well as time for those who helped organize the conferences and facilitate sessions. Title 40 CFR 30.23(d) provides that volunteer services may be counted as cost sharing if the service is an integral and necessary part of an approved project or program. The donated salaries for those individuals who only attended the conference or workshops do not qualify as in-kind costs, and are unallowable, but the salaries of those who helped organize or facilitate the conference or workshops would be allowable in-kind costs. The recipient's supporting documentation did not specify whether individuals were attendees only or if they were involved in organizing or facilitating the conferences or workshops. Without a complete breakout for all time claimed, we cannot determine allowable versus unallowable claimed in-kind costs.

The language on the confirmation forms also did not clearly direct the participants to only provide their regular rate of pay plus fringes. Title 40 CFR 30.23(e) provides that when an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay, plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs. The hourly rates provided by the third party participants ranged from \$16.90 to \$500 per hour. As the language on the confirmation forms was unclear, we contacted nine participants and asked them if they used their regular rate of pay plus fringes or a billing rate. Eight of the nine participants indicated that they used billing rates instead of their actual rate of pay plus fringes. We also obtained Internal Revenue Forms 990 for one other organization, and concluded that a billing rate was used instead of the actual rate of pay.

In order to comply with the Title 40 CFR 30.23, the recipient would need to provide: (1) the actual rate of pay for each volunteer, (2) the fringe benefits being claimed for each volunteer, and (3) records such as personnel activity reports to support the dates worked and the activity performed. The recipient would also need to demonstrate that the fringe benefits are reasonable, allowable, and allocable, and exclude overhead costs.

Because the recipient documentation to support the in-kind contributions does not meet the requirements of Title 40 CFR 30.23, we questioned \$378,445 detailed as follows:

Agreement	Total In-Kind Outlays Claimed	Questioned In-Kind Outlays
CX82580501	\$ 35,000	\$ 32,944
CX82591101	100,012	18,050
CR82774301	42,471	42,471
R82870801	128,493	32,157
TR8310010	272,303	252,823
Total	\$578,279	\$378,445

Source: OIG's analysis of reported outlays.

Recommendation 1

We recommend that EPA require the recipient to establish procedures to ensure:

- a. Procurement is conducted in accordance with Title 40 CFR Part 30.40.
- b. Subrecipients are appropriately monitored and managed, and documentation relating to awards, activities, and costs incurred is maintained.
- c. Documentation for in-kind contributions includes evidence that the donated services were properly valued in accordance with Title 40 CFR 30.23.

See **Schedules 1 through 7** for Recommendations 2 through 8.

Schedules of Reported Outlays and Results of Examination

Schedule 1 Reported Outlays and Results of Examination for Cooperative Agreement CX82580501

Description	Amount	Questioned Outlays	Note
Personnel	\$128,368	\$ 0	
Fringe benefits	52,717	0	
Travel	78,718	0	
Supplies	671	0	
Contractual	63	0	
Other	59,550	25,240	1
Indirect costs	220,677	0	
In-kind costs	37,530	32,944	2
Less: program income	(3,303)	0	
Reported outlays	\$574,991	\$58,184	
Less: questioned outlays	(58,184)		
Adjusted total outlays	516,807		
Less: recipient share	(35,000)		3
Federal share	481,807		
EPA payments	539,991		
Due EPA	\$58,184		

Sources: The reported outlays were from the recipient's *Financial Status Report* dated August 8, 2006. The questioned outlays and amount due EPA were based on the OIG analysis of reported outlays. The EPA payments came from EPA's Financial Data Warehouse.

Note 1: See discussion of unsupported subgrants in the **Results of Examination**.

Note 2: See discussion of unsupported in-kind costs in the **Results of Examination**.

Note 3: Recipient share based on information in award documents.

CX82580501 Award	Total Award Amount	Federal Share	Recipient Share
Original	\$250,000	\$225,000	\$25,000
Amendment 1	159,994	149,994	10,000
Amendment 2	164,997	164,997	0
Total	\$574,991	\$539,991	\$35,000

Source: OIG's summary of cooperative agreement CX82580501 and amendments.

Recommendation 2

We recommend that EPA require the recipient to provide adequate support for the questioned other and in-kind costs of \$25,240 and \$32,944, respectively, and disallow and recover the Federal share of any outlays which are not supported.

Schedule 2
Reported Outlays and Results of Examination for
Cooperative Agreement CX82591101

Description	Amount	Questioned Outlays	Note
Personnel	\$ 333,522	\$ 0	
Fringe benefits	120,651	0	
Travel	29,780	0	
Supplies	1,689	0	
Contractual	383,084	286,480	1
Other	41,833	0	
Indirect costs	556,599	0	
In-kind Costs	100,012	18,050	2
Less: program income	(11,541)	0	
Subtotal	\$1,555,629	\$304,530	
Less: excess costs incurred by the recipient	(217)		3
Reported outlays	\$1,555,412		
Less: questioned outlays	(304,530)		
Adjusted total outlays	1,250,882		
Less: recipient share	(100,012)		4
Federal share	1,150,870		
EPA payments	1,455,400		
Due EPA	\$304,530		

Sources: The reported outlays were from the recipient's *Financial Status Report* dated October 11, 2006. The questioned outlays and amount due EPA were based on the OIG analysis of reported outlays. The EPA payments came from EPA's Financial Data Warehouse.

Note 1: See discussion of improper procurement in the **Results of Examination**. See **Schedule 8: Contractor Outlays Questioned by Award and Contractor Name** for a detailed list of costs questioned by contractor.

Note 2: See discussion of unsupported in-kind costs in the **Results of Examination**.

Note 3: The recipient reported total outlays of \$1,555,412 but supporting documentation sustains total outlays of \$1,555,629. The variance of \$217 is due to additional costs incurred by the recipient. The additional costs incurred by the recipient are eligible for off-set of questioned costs.

Note 4: The recipient share is based on award documents as follows.

CX82591101 Award	Total Award Amount	Federal Share	Recipient Share
Original	\$1,000,000	\$900,000	\$100,000
Amendment 2	225,412	225,400	12
Amendment 3	165,000	165,000	0
Amendment 4	165,000	165,000	0
Total	\$1,555,412	\$1,455,400	\$100,012

Source: OIG's summary of cooperative agreement X82591101 and amendments.

Recommendation 3

We recommend that EPA require the recipient to provide adequate support for the questioned contractual and in-kind costs of \$286,480 and \$18,050, respectively, and disallow and recover the Federal share of any outlays which are not supported.

Schedule 3
Reported Outlays and Results of Examination for
Cooperative Agreement CR82774301

Description	Amount	Questioned Outlays	Note
Personnel	\$ 235,859	\$ 0	
Fringe benefits	98,089	0	
Travel	162,764	0	
Supplies	935	0	
Contractual	69,290	69,162	1
Other	75,685	0	
Indirect costs	421,077	0	
In-kind costs	42,471	42,471	2
Less: program income	(1,935)	0	
Reported/questioned outlays	\$1,104,235	\$111,633	
Less: questioned outlays	(111,633)		
Adjusted total outlays	992,602		
Less: recipient share-5%	(49,630)		3
Federal share	942,972		
EPA payments	1,061,764		
Due EPA	\$118,792		

Sources: The reported outlays were from the recipient's *Financial Status Report* dated March 3, 2005. The questioned outlays and amount due EPA were based on the OIG analysis of reported outlays. The EPA payments came from EPA's Financial Data Warehouse.

- Note 1: See discussion of improper procurement in the **Results of Examination**. See **Schedule 8: Contractor Outlays Questioned by Award and Contractor Name** for a detailed list of questioned outlays by contractor.
- Note 2: See discussion of unsupported in-kind costs in the **Results of Examination**.
- Note 3: The award documents identified a recipient share of 5 percent. Since the outlays were less than the award amount, the recipient share is calculated as 5 percent of adjusted total outlays.

CR82774301 Award	Total Award Amount	Federal Share	Recipient Share	Recipient % Share
Original	\$474,759	\$451,021	\$23,738	5%
Amendment 1	327,673	311,290	16,383	5%
Amendment 2	341,667	324,584	17,083	5%
Total	\$1,144,099	\$1,086,895	\$57,204	5%

Source: OIG's summary of cooperative agreement CR82774301 and amendments.

Recommendation 4

We recommend that EPA require the recipient to provide adequate support for the questioned contractual and in-kind costs of \$69,162 and \$42,471, respectively, and disallow and recover the Federal share of any outlays which are not supported.

Schedule 4
Reported Outlays and Results of Examination for
Cooperative Agreement X82857401

Description	Amount	Questioned Outlays	Note
Personnel	\$157,398	\$ 0	
Fringe benefits	65,976	0	
Travel	8,584	0	
Supplies	642	0	
Contractual	63,640	59,677	1
Other	193,440	0	
Indirect costs	283,479	0	
In-kind costs	0	0	
Less: program income	(61,090)	0	
Subtotal	\$712,069	\$59,677	
Less: excess costs incurred by the recipient	(31,324)		2
Reported outlays	\$680,745		
Less: questioned outlays	(59,677)		
Adjusted total outlays	621,068		
EPA payments	680,745		
Due EPA	\$59,677		

Sources: The reported outlays were from the recipient's *Financial Status Report* dated June 6, 2005. The questioned outlays and amount due EPA were based on the OIG analysis of reported outlays. The EPA payments came from EPA's Financial Data Warehouse.

- Note 1: See discussion of unsupported subgrants in the **Results of Examination**. The recipient recorded these subgrants under the contractual category, however, we addressed the findings in the **Results of Examination** under unsupported subgrants.
- Note 2: The recipient reported total outlays of \$680,745 but supporting documentation sustains total outlays of \$712,069. The variance of \$31,324 is due to additional costs incurred by the recipient. The additional costs incurred by the recipient are eligible to off-set questioned outlays.

Recommendation 5

We recommend that EPA require the recipient to provide adequate support for the questioned contractual (subgrant) outlays of \$59,677, and disallow and recover the Federal share of any outlays which are not supported.

Schedule 5
Reported Outlays and Results of Examination for
Cooperative Agreement R82870801

Description	Amount	Questioned Outlays	Note
Personnel	\$876,947	\$ 0	
Fringe benefits	362,737	0	
Travel	414,525	0	
Supplies	405	0	
Contractual	152,244	35,978	1
Other	69,155	0	
Indirect costs	1,462,761	0	
In-kind costs	32,157	32,157	2
Less: program income	(1,057)	0	
Reported outlays	\$3,369,874	68,135	
Less: questioned outlays	(68,135)		
Adjusted total outlays	3,301,739		
Less: recipient share	(128,493)		3
Federal share	3,173,246		
EPA payments	3,241,381		
Due EPA	\$68,135		

Sources: The reported outlays were from the recipient's *Financial Status Report* dated October 11, 2006. The questioned outlays and amount due EPA were based on the OIG analysis of reported outlays. The EPA payments came from EPA's Financial Data Warehouse.

Note 1: See discussion of improper procurement in the **Results of Examination**. See **Schedule 8: Contractor Outlays Questioned by Award and Contractor Name** for a detailed list of outlays questioned by contractor.

Note 2: The in-kind obligation for this agreement is \$128,493. The recipient used excess costs of \$96,336 and third party donated services of \$32,157 to meet this obligation. Regarding the questioned outlays, see discussion of unsupported in-kind costs in the **Results of Examination**.

Note 3: The award documents identified the recipient share as \$128,493.

R82870801 Award	Total Award Amount	Federal Share	Recipient Share
Original	\$938,299	\$891,384	\$46,915
Amendment 1	315,787	299,998	15,789
Amendment 2	52,631	50,000	2,631
Amendment 3	1,263,158	1,200,000	63,158
Amendment 4	800,000	800,000	0
Total	\$3,369,875	\$3,241,382	\$128,493

Source: OIG's summary of cooperative agreement R82870801 and amendments.

Recommendation 6

We recommend that EPA require the recipient to provide adequate support for the questioned contractual and in-kind costs of \$35,978 and \$32,157, respectively, and disallow and recover the Federal share of any outlays which are not supported.

Schedule 6
Reported Outlays and Results of Examination for
Cooperative Agreement TR83100101

Description	Amount	Questioned Outlays	Note
Personnel	\$460,652	\$ 0	
Fringe benefits	210,947	0	
Travel	136,619	0	
Supplies	0	0	
Contractual	99,890	74,000	1
Other	576,300	78,298	2
Indirect costs	0	0	
In-kind costs	272,303	252,823	3
Subtotal	\$1,756,711	\$405,121	
Less: excess costs incurred by recipient	(4,243)		4
Reported outlays	\$1,752,468		
Less: questioned outlays	(405,121)		
Less: required match	(242,484)		5
Federal share	1,104,863		
EPA payments	1,480,165		
Due EPA	\$375,302		

Sources: The reported outlays were from the recipient's interim *Financial Status Report* dated August 1, 2005. The questioned outlays and amount due EPA were based on the OIG analysis of reported outlays. The EPA payments came from EPA's Financial Data Warehouse.

Note 1: See discussion of improper procurement in the **Results of Examination**. See **Schedule 8: Contractor Outlays Questioned by Award and Contractor Name** for a detailed list of outlays questioned by contractor.

Note 2: See discussion on unallowable indirect other costs in the **Results of Examination**.

Note 3: See discussion of unsupported in-kind costs in the **Results of Examination**.

Note 4: The recipient reported total outlays of \$1,752,468, but supporting documentation sustained total outlays of \$1,756,711. The variance of \$4,243 is due to additional costs incurred by the recipient. The additional costs incurred by the recipient are eligible to off-set questioned outlays.

Note 5: The award documents identified recipient share \$449,045, as shown in the table below. The adjusted total outlays of \$1,347,347 (\$1,752,468 minus \$405,121) represent 54 percent of the total award. Recipient share is calculated as 54 percent of \$449,045, or \$242,484.

TR83100101 Award	Total Award Amount	Federal Share	Recipient Share
Original	\$720,000	\$600,000	\$120,000
Amendment 2	840,045	700,000	140,045
Amendment 3	951,030	762,030	189,000
Total	\$2,511,075	\$2,062,030	\$449,045

Source: OIG's summary of cooperative agreement TR83100101 and amendments.

Recommendation 7

We recommend that EPA: (a) disallow and recover the prohibited indirect costs of \$78,298; and (b) require the recipient to provide adequate support for the questioned contractual and in-kind costs of \$74,000 and \$252,823, respectively, and disallow and recover the Federal share of any outlays which are not supported.

Schedule 7
Reported Outlays and Results of Examination for
Cooperative Agreement H183110901

Description	Amount	Questioned Outlays	Note
Personnel	\$42,906	\$ 0	
Fringe benefits	19,797	0	
Travel	23,177	0	
Supplies	4,820	0	
Contractual	524,172	578	1
Other	29,086	0	
Indirect costs	190,492	0	
Subtotal	\$ 834,450	578	
Less: excess costs incurred by recipient	(1,150)		2
Reported outlays	\$833,300		
Less: questioned outlays	(578)		
Adjusted total outlays	832,722		
EPA payments	833,300		
Due EPA	\$578		

Sources: The reported outlays were from the recipient's *Financial Status Report* dated November 10, 2004. The questioned outlays and amount due EPA were based on the OIG analysis of reported outlays. The EPA payments came from EPA's Financial Data Warehouse.

Note 1: See discussion of improper procurement in the **Results of Examination**. See **Schedule 8: Contractor Outlays Questioned by Award and Contractor Name** for a detailed list of outlays questioned by contractor.

Note 2: The recipient reported total outlays of \$833,300 in its *Financial Status Report* but the supporting documentation sustains total outlays of \$834,450. The variance is due to additional costs incurred by the recipient of \$1,150. The additional costs incurred by the recipient are eligible to off-set questioned outlays.

Recommendation 8

We recommend that EPA require the recipient to provide adequate support for the questioned contractual outlays of \$578, and disallow and recover the Federal share of any outlays which are not supported.

Schedule 8
Schedule of Contractor Outlays Questioned
by Award and Contractor Name

	CX82591101	CR82774301	R82870801	TR83100101	H183110901	Total
Air & Waste Management Association	\$ 31,573					\$31,573
American Water Works Association	5,200					\$5,200
Caudill Website Design & Construction, Inc.				\$32,040		\$32,040
Center for Public Environment Oversight			\$29,516			\$29,516
Cybergroup	95,542	\$ 6,462	6,462		\$5,908	\$114,374
Environmental Council of the States	56,351					\$56,351
National Association of Counties	18,366					\$18,366
National Association of Local Government Environmental Professionals				26,960		\$26,960
National Forum for Black Public Administrators				15,000		\$15,000
San Francisco State University		62,700				\$62,700
Solid Waste Association of North America	36,837					\$36,837
The Water Environment Federation	42,611				(5,330)	\$37,281
Total	\$286,480	\$69,162	\$35,978	\$74,000	\$578	\$466,198

Source: The recipient's book and records.

In addition to the procurement issues discussed in the **Results of Examination**, the recipient made payments totaling over \$46,222 under agreement CX82591101 exceeding the agreed-upon terms of four contracts.

Contractor	Costs Paid in Excess of Contract
Air & Waste Management Association	\$ 8,458
Solid Waste Association of North America	13,722
The Water Environment Federation	19,496
Environmental Council of the States	4,546
Total	\$46,222

Source: OIG's analysis of the recipient's claimed contractual outlays.

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	9	We recommend that EPA require the recipient to establish procedures to ensure (a) procurement is conducted in accordance with Title 40 CFR Part 30.40; (b) subrecipients are appropriately monitored and managed, and documentation relating to awards, activities, and costs incurred is maintained; and (c) documentation for in-kind contributions includes evidence that the donated services were properly valued in accordance with Title 40 CFR 30.23.	U	Director, Grants Administration Division	TBD		
2	11	We recommend that EPA require the recipient to provide adequate support for the questioned other and in-kind costs of \$25,240 and \$32,944, respectively, and disallow and recover the Federal share of any outlays which are not supported.	U	Director, Grants Administration Division	TBD	\$58	
3	13	We recommend that EPA require the recipient to provide adequate support for the questioned contractual and in-kind costs of \$286,480 and \$18,050, respectively, and disallow and recover the Federal share of any outlays which are not supported.	U	Director, Grants Administration Division	TBD	\$305	
4	15	We recommend that EPA require the recipient to provide adequate support for the questioned contractual and in-kind costs of \$69,162 and \$42,471, respectively, and disallow and recover the Federal share of any outlays which are not supported.	U	Director, Grants Administration Division	TBD	\$119	
5	17	We recommend that EPA require the recipient to provide adequate support for the questioned contractual (subgrant) outlays of \$59,677, and disallow and recover the Federal share of any outlays which are not supported.	U	Director, Grants Administration Division	TBD	\$60	
6	19	We recommend that EPA require the recipient to provide adequate support for the questioned contractual and in-kind costs of \$35,978 and \$32,157, respectively, and disallow and recover the Federal share of any outlays which are not supported.	U	Director, Grants Administration Division	TBD	\$68	
7	21	We recommend that EPA: (a) disallow and recover the prohibited indirect costs of \$78,298; and (b) require the recipient to provide adequate support for the questioned contractual and in-kind costs of \$74,000 and \$252,823, respectively, and disallow and recover the Federal share of any outlays which are not supported.	U	Director, Grants Administration Division	TBD	\$375	
8	23	We recommend that EPA require the recipient to provide adequate support for the questioned contractual outlays of \$578, and disallow and recover the Federal share of any outlays which are not supported.	U	Director, Grants Administration Division	TBD	\$1	

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

Details of Cooperative Agreements

Cooperative Agreement CX82580501: This agreement was awarded with total costs of \$574,991 for the recipient to help local governments reduce public health risks from radon and other indoor air quality pollutants, and improve indoor air quality. Some of the ways the recipient reported that public health risks were reduced included:

Radon

- 304 homes were mitigated for radon and 3,913 homes were tested for radon;
- 375 homes were built using radon-resistant construction;
- 113 communities require testing or disclosure of radon as part of a real estate transaction;
- 8,327 radon kits have been distributed; and
- 204 radon presentations were made to low income/minority populations, the construction industry, and real estate industry.

Indoor Air Quality

- 11 schools fully implemented and 149 partially implemented indoor air quality management plans;
- 16,340 people live in homes where smoking is not allowed around children and 2,442 adults have committed to not smoke around children under age 6;
- 57 indoor air quality presentations were made to schools; and
- 267 asthma presentations were made to the general public and low income/minority groups.

Cooperative Agreement CX82591101: This agreement was awarded with total costs of \$1,555,412 for the recipient to design, host, and maintain a national local government environmental assistance network to increase environmental compliance and performance nationwide. The network serves as a “first-stop shop” providing environmental management, planning, funding, and regulatory information to local government officials. This is done through a Website, toll-free telephone number, and biweekly newsletter and other outreach. The EPA project officer reported that all deliverables were received and acceptable.

Cooperative Agreement CR82774301: This agreement was awarded with total costs of \$1,144,099 for the recipient to (a) research base reuse issues, including environmental contamination and land use controls, (b) disseminate the information to appropriate stakeholders, and (c) act as a clearinghouse and network for local practitioners to gain information. Activities under the grant included:

- researching and publishing a report on the use of land use controls at bases;
- holding two national forums on land use controls geared to local practitioners;
- rewriting the Base Reuse Handbook to update information and make it more useful;
- creating a Website dedicated to the collection and dissemination of information related to land use controls; and
- producing a publication on challenging contamination issues for local reuse efforts.

The EPA project officer reported that all deliverables were received and acceptable.

Cooperative Agreement X82857401: This agreement was awarded with total costs of \$680,745 for the recipient to maintain and expand the Smart Growth Network membership program and facilitate discussion on issues related to growth and development options that directly benefit city and county constituencies and the general public. Activities included:

- managing a paid membership database and transitioning paid membership system to free membership;
- developing a listserv in response to member interest;
- responding to approximately 1,200 phone and email inquires;
- preparing articles about smart growth and membership in the network;
- distributing 24 issues of the bimonthly newsletter, *Getting Smart*; and
- serving as a liaison between its members and the 22 partner organizations regarding smart growth.

The EPA project officer reported that all deliverables were received and acceptable.

Cooperative Agreement R82870801: This agreement was awarded with total costs of \$3,369,875 for the recipient to assist local governments and communities affected by contamination at hazardous waste sites, including brownfields and Superfund sites. Activities included:

- conducting research and disseminating information on topics such as brownfields redevelopment; the local government role in planning, implementing, and partnering in local job training initiatives; and how local officials can coordinate brownfields assessment, planning, cleanup, and redevelopment with co-located Superfund and Resource Conservation and Recovery Act sites;
- developing a brownfields peer exchange program and a model plan for addressing brownfields environmental justice issues;
- convening a series of forums on environmental justice and brownfields; and
- serving as a member of the 2001 and 2002 Brownfields Conference co-sponsor team.

The EPA project officer reported that all deliverables were received and acceptable.

Cooperative Agreement TR83100101: This agreement was awarded with total costs of \$2,511,075 for the recipient to conduct a series of brownfields conferences to disseminate information and results from various types of brownfields-related training, research, and technical assistance. The annual brownfields conferences are the largest annual forum of disseminating brownfields information to a broad range of stakeholders and are designed to assist stakeholder groups in understanding the environmental, public health, and economic impacts of brownfields. The recipient's role is to act as the lead non-Federal co-sponsor of the annual conferences. The EPA project officer reported that all deliverables to date have been received and are acceptable. This agreement is still in the interim phase.

Cooperative Agreement H183110901: This agreement was awarded with total costs of \$849,998 for the recipient to provide water security training for community water systems serving 50,000 to 100,000 persons and to provide vulnerability assessment and emergency response plan security training for community water systems. The training and other activities included the following:

- 15 training workshops focused on performing vulnerability assessments and developing emergency response plans;
- 3 introductory seminars via webcasts that review the steps for developing a vulnerability assessment and emergency response planning;
- Web-based training and a free hotline number about water system security; and
- on-site technical assistance visits to 44 clean water systems.

The EPA project officer reported that all deliverables were received and acceptable.

Scope and Methodology

We performed our examination in accordance with the *Government Auditing Standards*, issued by the Comptroller General of the United States, and the attestation standards established by the American Institute of Certified Public Accountants. We also followed the guidelines and procedures established in the “Office of Inspector General Project Management Handbook,” dated January 14, 2005.

We conducted this examination to express an opinion on the reported outlays, and determine whether the recipient complied with all applicable laws and regulations, as well as with any special requirements under the agreement. We conducted our field work from August 8, 2005, through November 28, 2006.

In conducting our examination, we performed procedures as detailed below:

- We interviewed EPA personnel and reviewed grant and project files to obtain background information on the recipient and the agreement.
- We interviewed recipient personnel to understand the accounting system and the applicable internal controls as they relate to the reported outlays.
- We reviewed the most recent single audit report to identify issues that may impact our examination.
- We reviewed the recipient’s internal controls specifically related to our objectives.
- We performed tests of the internal controls to determine whether they were in place and operating effectively.
- We examined the reported outlays on a test basis to determine whether the outlays were adequately supported and eligible for reimbursement under the terms and conditions of the agreements and Federal regulations and cost principles.

We verified that the recipient performed all tasks and provided all deliverables required under the agreement.

Recipient Response and OIG Comments

September 21, 2006

Ms. Janet Kasper
Acting Director, Assistance Agreement Audits
U.S. Environmental Protection Agency
Washington, DC 20460

Ms. Jan Lister
EPA-OIG
75 Hawthorne Street
7th Floor, Mailcode IGA-1
San Francisco, CA 94105

Re: Draft Attestation Report on EPA Grants CX82580501, CX82591101,
CR82774301, X82857401, R82870801, TR83100101, and H183110901

Dear Ms. Kasper and Ms. Lister:

This is in response to your letter dated July 21, 2006, requesting that the International City/County Management Association (ICMA) provide written comments on the above referenced Draft Attestation Report that you attached to your letter. You specifically asked that ICMA comment on the factual accuracy of the report and include documentation to support our position. You further state that it is your practice to include recipient comments in the final report, and we appreciate your consideration in this regard. Finally, you requested that ICMA respond by August 21, 2006; but it was agreed via email by Ms. Kasper that ICMA could make a timely response by September 21, 2006.

We firmly believe that we have strong documentation and justification to support the costs in question and offer the details below. Of the \$998,008 of payments to contractors questioned under improper procurement, \$883,634 were for payments to contractors who were specifically named and included in our original proposals and budgets and were approved by EPA.

OIG Comment: The fact that EPA approved the cooperative agreements does not ensure allowability of costs. Recipients are responsible for ensuring that all purchases comply with EPA regulations.

We have strong justification for the remaining \$114,374 of contractor payments. Moreover, we have documentation to support virtually all of the \$627,515 in questioned in-kind costs and are in the process of obtaining the documentation to support our cost share commitments.

We are taking this matter seriously and are embarking on a comprehensive review of our policies and procedures to ensure that we are in full compliance of all regulations and continue to offer additional training to appropriate staff as well as sub recipients.

You audited seven cooperative agreements awarded to the International City/County Management Association (“ICMA”) totaling \$10,686,195. Of that amount, you questioned \$1,786,942 because of possible unallowable outlays for contractual services, subgrant costs, indirect labor and facilities costs, in-kind costs, and program income. The major areas of concern were (1) improper procurement, (2) unsupported subgrants, (3) unallowable indirect other costs, (4) unallowable and unsupported in-kind costs, and (5) unsupported program income.

ICMA has carefully reviewed your Draft Report including the results of examination and offer the following as a response. At the outset, as you noted in your Draft Report, ICMA is a non-profit organization that has been in existence since 1914. ICMA is one of the premier associations representing city and county managers throughout the United States and abroad and covering virtually all aspects of best practices by local governments. We understand and appreciate the concerns that your Draft Report has identified, and we desire to work closely with you to resolve as many issues at this stage of the process so that they are not included in any final report that your office may issue at a later time. As stewards of good government and, in this case regarding EPA’s assistance dollars, ICMA is committed to having proper procedures in place to assure compliance with EPA’s applicable regulations.

Your recommendation is for ICMA to adopt procedures to ensure that (a) procurement is conducted in accordance with Title 40 CFR Part 30.40, (b) subrecipients are appropriately monitored and managed and documentation relating to awards, activities, and costs incurred is maintained, (c) documentation of in-kind contributions includes evidence that the donated services (1) were not included as contributions for other Federally assisted projects or paid for under another award, and (2) were an integral and necessary part of the program, and (d) documentation of in-kind contributions other than donated services is adequate to support the basis for determining the amount claimed.

As stewards of federal funds and an organization that holds itself out as a resource center of excellence for local governments nationally and internationally, we fully understand the need to maintain appropriate systems and safeguards as you outlined. ICMA appreciates your concern about our need to adopt these procedures and want to assure you that we are in the process of reviewing and, enhancing as needed, our existing policies procedures, and are committed to offering additional training and contract administration support to all relevant staff over the next 6 months.

1. IMPROPER PROCUREMENT

Your first set of findings are that ICMA had not obtained fair and reasonable prices when purchasing goods and services, and you questioned \$998,008 as unallowable. You observe that under 40 CFR 30.43, ICMA is required to purchase goods and services using open and free competition to the maximum extent practical. Further, whether the purchases are made on a competitive or noncompetitive basis, you observe that ICMA is obliged to conduct some form of cost or price analysis and document the analysis in the procurement file.

You stated in Schedule 8 of the draft attestation report (Tab 1) that 12 of 13 contracts were awarded on a sole source basis without justifying the lack of competition. You also noted that ICMA did not provide any documentation to support that cost or pricing analysis were conducted.

At the outset, we agree that open and free competition is desirable when conducting procurements under grants and cooperative agreements, but there is a well stated exception when a proposal is submitted that reflects the fact that the subrecipient has entered into a teaming arrangement. See FAR 9.6 and specifically 9.604(d). We also agree that ICMA must obtain adequate price or cost analysis to determine that the pricing is fair and reasonable. Where the award is made on a sole source basis and the resulting award is fixed price in nature, price analysis should demonstrate that the price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition. See FAR 15.4. Typically, for this type of analysis, ICMA looks at such data and also, where appropriate, looks at the labor categories, labor rates, and mix of people working on the subagreements to support such an effort.

OIG Comment: The cited Federal Acquisition Regulations (FAR 9.604(d) and FAR 15.4) are not applicable to contracts awarded by nonprofit organizations. The recipient is required to follow the provisions in Title 40 CFR Part 30 for purchases of goods and services.

Agreement: CX82591101

Local Government Environmental Assistance Network (LGEAN)

In Schedule 8, you questioned 7 contracts under this award, for lack of competition and lack of documentation to support that cost or pricing analyses were conducted.

You addressed the Cybergroup contract valued at \$95,542 on the grounds that there was no support for (1) the basis of contractor selection, (2) the justification for lack of competition, and (3) the basis for award cost or price. You also could not find copies of negotiated contract agreements.

In response, we note that Cybergroup was an existing contractor supporting ICMA in its development of its webpage using a software called “cold fusion.” ICMA’s original intention was to design and construct the LGEAN website within the ICMA Information Technology Department. However, due to the complex linkage requirements of the LGEAN website and the

demands of the website, ICMA contracted with Cybergroup, LLC to design, construct, and provide maintenance of the website. The website was designed to provide links to the consortium members' databases. The website also provided federal, state, local and private sources of regulatory compliance and technical assistance information.

After discussions with several of the bidders including Cybergroup, it was determined that Cybergroup offered the best value in terms of price, quality, and understanding of ICMA's needs, including interaction with the existing cold fusion capability. Indeed, it turns out that Cybergroups labor rates were less expensive than ICMA's internal costs to perform the same functions. In addition, Cybergroup was willing to make in-kind contributions to the LGEAN program. (See Tab 1A for the relevant supporting documentation)

OIG Comment: We questioned all outlays claimed under the Cybergroup contract totaling \$114,374 because the recipient could not demonstrate that this procurement was conducted in a manner to provide, to the maximum extent practical, open and free competition, as required by Title 40 CFR 30.43. Consequently, the recipient was unable to demonstrate that it received fair and reasonable prices.

For purchases in excess of the small purchase threshold of \$100,000, Title 40 CFR 30.46 requires procurement records and files to include at a minimum: (1) basis for contractor selection; (2) justification for lack of competition when competitive bids or offers are not obtained; and (3) basis for award cost or price. At the time of the audit, the recipient had no support for any of these requirements.

In response to this audit, the recipient prepared a sole source justification for the Cybergroup contract. However, the sole source justification did not incorporate any of the four elements included in EPA's guidance on *Purchasing Supplies, Equipment and Services Under EPA Grants* for nonprofit organizations. The four elements are: (1) the item or service is available only from one source; (2) public exigency; (3) EPA approval is requested and obtained; or (4) only one bidder responds to an advertisement.

Also, in response to this audit, the recipient prepared a price analysis for the Cybergroup contract. However, because the recipient did not compete the contract, an adequate price analysis could not be conducted as there were no competitor prices to compare. Further, EPA guidance provides that a cost review must be conducted for all sole source purchases.

The recipient stated that it had "discussions with several bidders... and determined that Cybergroup had the best value..., and it stated that the project manager performed an analysis of several bidders. However, no documentation was provided to support these discussions or analyses.

The recipient's response did not address the audit issue of lack of negotiated contract agreements for the Cybergroup contract. The only contract award supporting documentation maintained by the recipient was the master consulting agreement, which includes general contract terms but does not include scope of work or cost data. The recipient could not provide the negotiated contract agreements that included the scope of work and cost elements.

We maintain our position with regard to the Cybergroup contract for all outlays claimed under agreements CX92591101, CR82774301, X8287801, and H183110901. The recipient could not demonstrate that this procurement was conducted in a manner to provide, to the maximum extent practical, open and free competition. There was inadequate support for the basis of contractor selection, inadequate justification for lack of competition, no cost review, and no copies of the negotiated contract agreements. Therefore, we continue to question all outlays claimed under the Cybergroup contract totaling \$114,374.

In response to the questioned amounts paid under the remaining 6 contracts, we note that in March 1997, Shannon Flanagan, an ICMA project manager, was contacted by the Office of Environmental Compliance, United States Environmental Protection Agency, to invite ICMA to a meeting with several other non-profit local government and environmental organizations. John Dombrowski of EPA convened the meeting to discuss a new concept for providing environmental compliance and regulatory information to local governments. Shannon and Mosi Kitwana, Director of ICMA Domestic Technical Assistance, attended the meeting. Also in attendance were representatives from the American Public Works Association (APWA), National Association of Counties, Solid Waste Management Association of North America, Environmental Council of the States, the Water Environment Federation, the American Water Works Association, and the Air and Waste Management Association. The meeting was about creating a new web based resource for environmental regulations tracking and compliance. After the concept was discussed, EPA asked groups to consider developing a proposal or proposals to create such a resource and presenting it to EPA. The organizations discussed the idea and two organizations, ICMA and APWA expressed interest in leading the development of such a web based resource. Each organization developed a proposal for consideration by EPA. Each proposal had multiple partners including all the organizations that attended the meeting. Each of these groups represented key environmental professionals that could contribute to a comprehensive environmental management resource such as LGEAN was designed to be. Hence, it is clear that the EPA project office was directly involved in setting up the respective teams and their scopes of work.

EPA determined the amount that would be available for each consortium member. Therefore, there was no need to perform a price analysis because each of the consortium members was to receive the same amount (\$58,688 each).

ICMA issued cost reimbursable contracts to the six consortium members on September 29, 1997. The contracts were for a period of twenty-four months with *funding for twelve months*. The original consortium member budgets were reduced due to the reduction in the funding amount received from EPA. ICMA negotiated with each of the consortium members to establish the cost

for each based on the areas of expertise and the tasks that the member was assigned. Four of the members received a contract for \$23,115 each (Air and Waste Management Association, The Water Environment Federation, American Water Works Association, and Solid Waste Association of North America). The remaining two members received funding of \$46,432 (Environmental Council of the States) and, \$28,608 (National Association of Counties). As a requirement of the contract each member invoiced on a quarterly basis along with their quarterly report.

There were no cost overruns because at the end of each year of the contracts, ICMA and the member reviewed the statement of work and revised it as needed in the form of a modification to the original contract. This modification included additional funding for the next year and an extension of time when required. On January 29, 1999, and again on March 2000, ICMA increased the funding and extended the end date for four of the original contracts; Air and Waste Management Association received an additional \$8,458, Environmental Council of the States received an additional \$4,546, Solid Waste Association of North America received an additional \$13,722 and The Water Environment Federation received an additional \$19,496. (See Tab 1B for relevant documentation)

OIG Comment: EPA's direct involvement in setting up the respective teams, scopes of work, and funding thresholds does not negate the recipient's obligation of meeting full procurement requirements. All procurement transactions must be conducted in a manner that provides, to the maximum extent possible, open and free competition per Title 40 CFR 30.43.

In response to this audit, the recipient prepared sole source justifications and price analyses for all six contracts. However, because the recipient did not compete the contracts, an adequate price analysis could not be conducted as there were no competitor prices to compare. Further, according to EPA's guidance on *Purchasing Supplies, Equipment and Services Under EPA Grants*, a cost review must be conducted for sole source procurement.

To address the issue of \$46,222 in payments made in excess of the agreed upon terms of four contracts under agreement CX82591101 (see page 24) the recipient provided contract modifications for all four contracts. The contract modifications covered the questioned dollar amounts but no cost analyses were provided for any of these modifications, as required for every procurement action by Title 40 CFR 30.45.

We maintain our position that the recipient could not demonstrate that these procurements were conducted in a manner to provide, to the maximum extent practical, open and free competition. In addition, cost analyses were not provided for each of the contract modifications. Consequently the recipient could not demonstrate that it received fair and reasonable prices. Therefore, we continue to question all outlays reported under these six contracts totaling \$190,938.

Agreement: CR82774301
Base Closure and Land Use Controls Research Program

In Schedule 8, you questioned 2 contracts under this award, for lack of competition and lack of documentation to support that cost or pricing analyses were conducted.

For our response regarding the questioned amounts paid to Cybergroup, please see page 3 of this letter. Based on ICMA's positive previous work experience with Cybergroup under the LGEAN program, we concluded that this contractor could perform the work requested at a reasonable price. (See supporting documentation in Tab 1A)

OIG Comment: See our response on pages 33 and 34.

In response to the questioned amounts paid to San Francisco State University, we note that Objective 4 of the original proposal was to hold two forums to research citizens concerns about the ability of local governments to create and enforce land use controls. The proposal included two two-day forums to be conducted by Center for Public Environmental Oversight (CPEO) at San Francisco State University (SFSU), in partnership with ICMA. CPEO was uniquely qualified because of their experience in representing residents in military base environmental cleanup processes. Their commitment to educate communities about environmental cleanups and its effect on human health made them a perfect partner to work with ICMA on this project. The contract between ICMA and SFSU was due to CPEO being affiliated with SFSU. (See Tab 1C)

OIG Comment: In response to this audit, the recipient prepared a sole source justification and price analysis for the San Francisco State University contract. However, because the recipient did not compete this contract, an adequate price analysis could not be conducted as there were no competitor prices to compare. Further, according to EPA's guidance on *Purchasing Supplies, Equipment and Services Under EPA Grants*, a cost review must be conducted for sole source procurement.

We maintain our position that the recipient could not demonstrate that this procurement was conducted in a manner to provide, to the maximum extent practical, open and free competition and that fair and reasonable prices were obtained. Accordingly, we continue to question all contract outlays reported under agreement CR82774301 for the San Francisco State University contract totaling \$62,700.

Agreement: X82870801
Brownfields Research Program

In Schedule 8, you questioned 2 contracts under this award, for lack of competition and lack of documentation to support that cost or pricing analyses were conducted.

In response to the questioned amounts paid to Center for Public Environmental Oversight (CPEO), we offer that CPEO was included as a partner in the original proposal to EPA for the Brownfields Research Program. Based on ICMA's positive previous work experience with CPEO under the Base Closure and Land Use Program we concluded that this contractor would perform the training and research as requested and at a reasonable price. (See Tab 1D)

OIG Comment: In response to this audit, the recipient prepared a sole source justification and price analysis for the Center's contract. However, because the recipient did not compete the contracts, an adequate price analysis could not be conducted as there were no competitor prices to compare. Further, according to EPA's guidance on *Purchasing Supplies, Equipment and Services Under EPA Grants*, a cost review must be conducted for sole source procurement.

We maintain our position that the recipient could not demonstrate that this procurement was conducted in a manner to provide, to the maximum extent practical, open and free competition and that fair and reasonable prices were obtained. Accordingly, we continue to question all contract outlays reported under agreement R82870801 for the Center's contract totaling \$29,516.

For our response regarding the amount paid to Cybergroup, please see page 3 of this letter. Based on ICMA's positive previous work experience with Cybergroup under the LGEAN program, we concluded that this contractor could perform the work requested at a reasonable price. (See Tab 1A)

OIG Comment: See our response on pages 33 and 34.

Agreement: TR83100101
Brownfields Conference

In Schedule 8, you questioned 3 contracts under this award, for lack of competition and lack of documentation to support that cost or pricing analyses were conducted.

In response to the questioned amounts paid to Caudill Website Design and Construction, Inc. we note that ICMA had a longstanding relationship with Herb Caudill of ibamba/Caudill Web prior to submitting a proposal to EPA to present the National Brownfields Conferences in January 2003. He developed ICMA's organizational website, including the annual conference web presence. In addition, he developed ICMA's comprehensive Brownfields website called Brownfieldsource.org. Mr. Caudill contributed to the writing and led the graphic design of ICMA's National Brownfield Conference proposal and also designed elements of the conference website prior to ICMA submitting the proposal to EPA. These web pages are referenced in the proposal in several places including in the text under the heading "Conference Website" and a screen shot on page 17 of the proposal. In addition, other screenshots of the proposed website featuring ibamba's web address are presented in the Attachments section under "Brownfields 2003 Conference Website".

In 2005, ICMA competed the Brownfields Conference website design and maintenance and received three bids (Netronix Corporation, Activenation, and Caudill Website Design & Construction). Caudill Website Design & Construction submitted the lowest price at \$19,800.

The other two companies submitted proposals for \$21,000 and \$31,025. ICMA has on file contracts for 2003, 2004, 2005, and 2006. (See Tab 1E)

OIG Comment: In response to this audit, the recipient prepared a sole source justification and a price analysis for the Caudill contracts issued from 2003 through 2004. However, because the recipient did not compete the contracts, an adequate price analysis could not be conducted as there were no competitor prices to compare. Further, according to EPA's guidance on *Purchasing Supplies, Equipment and Services Under EPA Grants*, a cost review must be conducted for sole source procurement.

The recipient demonstrated that the contract in 2005 was competitively bid and a price analysis was conducted. Accordingly, we have reinstated the questioned outlays related to the 2005 contract. However, we maintain our position that the recipient could not demonstrate that the 2003 and 2004 contracts were conducted in a manner to provide, to the maximum extent practical, open and free competition and that fair and reasonable prices were obtained. Accordingly, we continue to question all contract outlays reported under agreement TR83100101 totaling \$32,040.

To address the issue of \$1,290 in payments made in excess of the agreed upon terms of the contracts, the recipient provided a copy of the 2003 Caudill contract, which had not previously been provided to the audit team. This adequately addresses this issue and we will omit this issue from the final report.

In response to the questioned amounts paid to National Association of Local Government Environmental Professionals (NALGEP) and National Forum for Black Public Administrator's (NFBPA), we note that NALGEP and NFBPA were partners with ICMA in the original proposal for the Brownfields Conference application to EPA. NALGEP and NFBPA's role was to assist with and secure high-level plenary and diverse session speakers and moderators to the conference. Both organizations have dedicated resources to bring under-represented groups to the conference. They have a unique network with minority groups, including the NFBPA membership of 2,500 African American Public Administrators from all levels of government, Coalition of Minority Transportation Officials, Coalition of Minority Public Administrators, and Blacks in Government. NALGEP's mission is to bring together local environmental officials to network and share information on innovative environmental practices, conduct environmental policy projects, promote environmental training and education, and communicate the view of local environmental officials on national environmental issues. Their lead staff are intimately familiar with brownfields across the country.

NALGEP submitted cost data on the labor categories and the rates appeared to be reasonable for non-profit organizations when compared to ICMA and other non-profits. This was a fixed price

contract to perform services for the planning and technical assistance to the Brownfields Conference for 2003 and 2004. The invoices from NFBPA detailed the labor costs which seemed reasonable for the work performed. The fixed contract was for \$15,000 which was reasonable for the work performed. (See Tab 1E)

OIG Comment: In response to this audit, the recipient prepared sole source justifications and price analyses for both the NALGEP and NFBPA contracts. However, because the recipient did not compete the contracts, adequate price analyses could not be conducted as there were no competitor prices to compare. Further, according to EPA's guidance on *Purchasing Supplies, Equipment and Services Under EPA Grants*, a cost review must be conducted for sole source procurement.

We maintain our position that the recipient could not demonstrate that this procurement was conducted in a manner to provide, to the maximum extent practical, open and free competition and that fair and reasonable prices were obtained. Accordingly, we continue to question all contract outlays reported under agreement TR83100101 for the NALGEP contracts totaling \$26,960 and the NFBPA contracts totaling \$15,000.

Agreement: H183110901
Water Security Training

In Schedule 8, you questioned 2 contracts under this award, for lack of competition and lack of documentation to support that cost or pricing analyses were conducted.

You addressed the situation with CH2M Hill to provide vulnerability assessment training to water systems. You questioned the full costs of the contract in the amount of \$513,000 because you found no support that (1) the number of hours were reasonable, (2) the amount of profit relative to the price of the contract was reasonable, (3) the rates in the contract compared with the rates in the Forward Pricing Agreement, and (4) the reason a fixed price contract was used. In response, we wish to point out that the contract with CH2M Hill resulted from an initial proposal by ICMA, that included CH2M Hill's initial proposal, which EPA first analyzed and then came back to ICMA in May 2003 with a request to reduce the level of effort by approximately 50% so that the work could be split evenly between ICMA's team and Water Environment Federation (WEF). Based on this request, ICMA engaged in discussions with WEF, the EPA project office, and CH2M Hill to determine how to accommodate EPA's request; and the result was a fixed price proposal that reduced staffing and level of effort to fit within the financial parameters that EPA set out.

At the time the fixed price contract was negotiated, we examined CH2M Hill's GSA Environmental Advisory Services and GSA MOBIS rates and compared them to the labor rates proposed in the fixed price contract and the budgeted rates. Our conclusion was that the proposed rates compared favorably to their GSA rates.

Moreover, the training, workshops and phone/on-site consultations, provided under this agreement was designed to assist local governments in meeting a statutory deadline to develop a water security plan. Therefore, to move quickly to award and avoid the need for lengthy negotiations, we determined that a fixed price contract was appropriate especially since the burden of risk fell on CH2M Hill to complete the scope of work within the timeframe and budget called for under the contract. Because CH2M Hill agreed to undertake this work on a fixed price basis and take on the financial risk on a performance based basis, the negotiations between EPA, ICMA and CH2M Hill focused mostly on outcomes – in this case training and workshops – and not so much on the number of hours by labor category. Had the contract between ICMA and CH2M Hill been cost reimbursement or time and materials in nature, then ICMA would have focused more on the labor categories and level of effort as the financial risk of performance would have fallen on ICMA and ultimately EPA. This is entirely consistent with cost and price analysis principles when the contract is fixed price in nature.

In order to monitor the fixed price contract and the progress of the work to be performed, ICMA and CH2M Hill established the criteria for determining percentage completion. CH2M Hill used the final negotiated chart as a basis for invoicing ICMA for the Water Security Training Contract. See memorandum dated June 29, 2003. This chart was based on the budget submitted with the proposal. The final percentage completion chart used for invoicing was based on the revised scope of work issued by EPA. (See Tab 1F)

OIG Comment: We no longer question the outlays for the CH2M Hill contract.

For our response regarding the amount paid to Cybergroup, please see page 3 of this letter. Based on ICMA's positive previous work experience with Cybergroup under the LGEAN program, we concluded that this contractor could perform the work requested at a reasonable price. (See Tab 1A)

OIG Comment: See our comments on pages 33 and 34.

2. UNSUPPORTED SUBGRANTS

You state that ICMA did not adequately oversee subgrants and did not maintain documentation to support the award, activities, and costs claimed under the subgrants. Based on your concern about the lack of this information, you questioned \$84,917 claimed on two grants. .

Agreement: X82857401

Smart Growth Network

You questioned 14 subgrants that ICMA awarded to non-profit organizations totaling \$59,677 because ICMA could not provide the award documents, proposals, progress reports, financial reports, or evidence that follow up was conducted on the work product resulting from the subgrant.

ICMA issued three RFP's: one covering two award rounds for 2002, and, one per year in 2003 and 2004. The three requests for proposals, which state the requirements to receive grant funds under this Smart Growth Network program, were sent out to potential respondents. Each recipient was required to submit a proposal with cost information on the publication for which

they requested to receive grant funds. 14 grants were awarded for production, printing and distribution costs associated with publications that support the Smart Growth Network.

In March 2002 three grants were issued as follows:

National Trust for Historic Preservation - \$2,376
American Farmland Trust - \$4,000
American Planning Association - \$4,789

In September 2002 five grants were issued as follows:

Local Government Commission - \$4,666
National Neighborhood Coalition - \$4,540
American Farmland Trust - \$4,610
1000 Friends of New Mexico - \$4,666
Vermont Forum on Sprawl - \$4,659

In August 2003 four grants were issued as follows:

Local Government Commission - \$3,965
Conservation Fund - \$4,417
Environmental Law Institute - \$4,430
Vermont Forum on Sprawl - \$4,684

In August 2004 two grants were issued as follows:

Smart Growth America and National Wildlife Federation - \$4,000
Western Upper Peninsula Center for Science, Mathematics and Environmental Education at the Michigan Technological University - \$3,875

Due to the nature of these grants it was not necessary to receive financial or program status reports from the grantee. The only follow-up necessary was to ascertain that the publications were produced and distributed to the intended recipients who were members of the Smart Growth Network. Since ICMA staff worked with all grantees to distribute the publications, ICMA can affirm that all publications were produced and distributed. (see Tab 2A)

OIG Comment: In response to the draft report, the recipient attempted to remedy the finding by retroactively preparing and negotiating 11 of the 14 subgrants. The recipient also provided 13 of the 14 original subgrant applications. However, the recipient stated that it was not necessary to receive financial and program status reports from the grantee. We disagree. The recipient does not have the authority to disregard Federal requirements when using Federal funds. The regulations require financial and performance reports for the use of Federal funds. Without an accounting of the sub-award monies, any unused funds could eventually be used for unauthorized or unallowable activities.

We maintain our position that the recipient did not adequately oversee the subgrants, and specifically, the recipient could not provide: (1) award documents issued when the subgrants were awarded, and (2) financial and performance reports. For these reasons we are questioning all subgrant outlays claimed of \$59,677.

Agreement: CX82580501
Indoor Air Quality Grants

You questioned 24 subgrants that ICMA awarded to non-profit organizations totaling \$25,240 because ICMA could not provide the award documents, proposals, progress reports, financial reports, or evidence that follow up was conducted on the work product resulting from the subgrant.

In response we note that ICMA initially proposed to award 24 subgrants, but despite our best efforts, we could only find 19 eligible recipients. Subgrant funds that were not issued were reprogrammed into other activities under the cooperative agreement.

All of the grantees were participants trained on indoor air quality as part of the workshops provided by ICMA/EPA and from this pool of trainees the subgrants were advertised and proposals received.

There were a total of ten subgrants issued each in the amount of \$1,000, one for \$870 and one for \$930 in 1998. In 1999 there were two subgrants issued for \$1,000 each, and in 2000 there were three issued for \$1,500 each. The applications for the subgrants requested the amounts listed above and based on the criteria the dollar amount requested was funded. According to the annual report for year 2, five schools were chosen as "School IAQ/Energy Efficiency Demonstration Sites". Each school received a grant of \$1,500 for a total of \$7,500. Two health departments were awarded "Performance Mini-Grants" for a total of \$2,000. The remaining \$2,500 was used to cover Tools for Schools symposium scholarships, with a commitment of \$2,500 in the period three funds for subgrants to localities.

Due to the small amount and nature of these grants ICMA did not require financial or reporting requirements of the grantees. The two Annual Reports (1997 – 2000) for this project, describes the activities that were performed under this agreement. (See Tab 2B)

OIG Comment: In response to the draft report, the recipient provided voucher check request forms as supporting documentation. The purpose of a voucher check request form is to initiate payment, not document a subgrant award, and therefore, is not adequate documentation for the purpose of supporting the subgrant award. In addition to the voucher check request forms, the recipient prepared and negotiated three subgrants in August 2006, which is after the subgrant was awarded, funds were advanced, and performance was completed. The subgrant award documentation should be prepared contemporaneously

when the subgrant is awarded. Also, the recipient did not provide 7 original subgrant applications out of the 24 subgrants awarded.²

The recipient did not provide us with any financial and performance reports because it does not believe that the reports were necessary “due to the small amount and nature of these grants.” We disagree. The recipient does not have the authority to disregard Federal requirements when using Federal funds. The regulations require financial and performance reports for the use of Federal funds. Without an accounting of the sub-award monies, any unused funds could eventually be used for unauthorized or unallowable activities.

We maintain our position that the recipient did not adequately oversee the subgrants, and specifically, the recipient could not provide: (1) award documents issued when the subgrants were awarded, and (2) financial and program status reports. For these reasons we are questioning all subgrant outlays claimed totaling \$25,240.

3. Unallowable Indirect Other Costs:

Agreement: TR83100101
Brownfields Conference

Under agreement TR83100101, as you correctly state, EPA authorized ICMA to bill \$78,298 of indirect costs to EPA. This amount was not included in the indirect costs allocated to any other project, so there was no double recovery by ICMA of this amount.

We disagree with your characterization of this situation in that ICMA did not deviate from the cost accounting principles embodied in OMB Circular A-122 or other applicable accounting standards. All of the questioned costs were charged to indirect costs pools and those pools were allocated to all projects including the Brownfields Conference project. The indirect cost allocated to the Brownfields Conference through 06.30.2005 was \$813,304. This amount was not charged to any other project.

ICMA could not bill EPA for the indirect costs incurred under the program, but because it was authorized to directly bill EPA for certain programmatic costs not prohibited by Section 104 (k) of CERCLA, ICMA billed the \$78,298 directly but did not bill any of the \$813,303 as indirect costs.

Simply put, this was a billing issue and not a cost allocation issue. ICMA could not change its indirect cost allocation methodology based on the issues surrounding one specific agreement. In accordance with the provisions of OMB Circular A-122 (subsection B and C) which requires consistent treatment of like costs, ICMA continued to charge all indirect costs to the indirect cost pool and allocated the indirect costs to all projects including the Brownfields Conference project.

² The recipient stated that it awarded only 19 subgrants. Our review of the recipient's records identified 24 subgrantees who received funding totaling \$25,240.

OIG Comment: On April 14, 2003, the recipient proposed to EPA to direct charge certain costs and remove those costs from the indirect cost pool. EPA agreed and approved a special grant condition that provided that costs for required performance and financial reporting are eligible as programmatic costs, when billed as direct costs to the project, and are not included in the recipient's indirect cost pool.

The recipient's proposal and EPA's approval to direct charge these costs were in conflict with the provisions of OMB Circular A-122, Attachment B, Paragraph B(1), which provides that "a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstance, has been allocated to an award as an indirect cost."

The recipient agreed that the special grant conditions were in conflict with the OMB Circular. Thus, instead of changing its indirect cost allocation methodology for one agreement, the recipient recorded the programmatic costs associated with the Brownsfields agreement to the indirect expense pool and allocated the \$72,298 as indirect costs.

The recipient's decision not to change its indirect cost allocation methodology was correct. However, as stated in this report, EPA has determined that indirect costs are not allowable under Section 104 (k) of the Comprehensive Environmental Response, Compensation, and Liability Act. Thus, we maintain our position that the \$78,298 in indirect costs is unallowable in accordance with the Act.

4. Unallowable and Unsupported In-Kind Costs

You questioned \$627,515 of in-kind outlays because ICMA (1) did not provide assurance that the donated salaries claimed as in-kind costs were exclusive of Federal funds, (2) salaries of conference attendees did not qualify for in-kind costs, and (3) there was inadequate documentation to support other types of in-kind costs.

In response we offer that ICMA currently has documentation for approximately 90% of the questioned in-kind costs. ICMA utilizes the services of third parties who are typically not funded by federal funds, such as local government officials, to provide in-kind services. However, ICMA has taken measures to ensure that all future verification of in-kind cost share include a certification stating that the donated salaries claimed as in-kind costs were not included as contributions for any other Federally assisted program and that they were exclusive of Federal funds. We are also in the process of obtaining declarations certifying that the costs in question under each of the agreements satisfy the in-kind cost requirements. We are attaching the declarations and other relevant back up that we have received to date and offer explanations for the kinds of activities that we used to claim in-kind costs, and we will continue to collect further supporting documentation.

Agreement: CX82580501

Questioned Amount: \$37,530

ICMA's cost share obligation under this agreement is \$35,000.

During project implementation, ICMA organized several training sessions for local government environmental officials and association representatives. The majority of the cost share originally reported by ICMA included the value of the time that the attendees spent at the training sessions. Upon further review and based on the interpretation of the Cost Share Regulations, we agree that these costs were ineligible as in-kind contributions.

There were other types of cost share originally reported that would be deemed eligible but required additional backup and support. The major challenge in obtaining the additional information was that the project activities occurred a number of years ago (1997-1999). ICMA is contacting the speakers for the training sessions to get the appropriate certifications. In December 1998, ICMA surveyed all communities trained on indoor air issues in prior years. ICMA is contacting the 40 survey respondents to obtain confirmation of their participation and certification that they were not funded by the US government.

A few of the training sessions were held in the First Floor Training room in 777 N. Capitol Street, NE, Washington, DC. ICMA contacted the building management company to determine the value of the meeting space and audio visual equipment rental. (See Tab 4A)

OIG Comment: On August 3, 2006, the recipient submitted a revised final *Financial Status Report* to EPA which reported \$35,000 as the recipient share of outlays. In response to the draft report, the recipient provided additional documentation to support \$2,056 of the recipient's \$35,000 cost share. Consequently, we questioned the \$32,944 (\$35,000 - \$2,056) difference as unsupported.

Agreement: CX82591101

Questioned Amount: \$98,994

ICMA's cost share obligation under this agreement is \$100,012. ICMA currently has supporting documentation for the full amount of the cost share obligation.

The LGEAN project involved several partner organizations and each partner was required to contribute cost share to the project. ICMA also committed its own in-kind contributions.

Several partners donated conference exhibit space to ICMA in order to promote the LGEAN project. ICMA followed up with the partners to obtain sufficient backup for these contributions. The ICMA annual conference also donated exhibit space to the LGEAN project. A few of the partners and ICMA itself donated advertisement space in various publications in order to promote the LGEAN project. ICMA is obtaining copies of the articles as well as the value of the contribution.

The principals of a few of the partner organizations donated their time to developing and promoted the LGEAN project. ICMA contacted the organizations to obtain certifications from these individuals. Some partners were also reimbursed by the project for less than they expended (for example, an organization may have submitted an invoice for a certain amount and ICMA paid 90% of the amount. Thus, the organizations committed 10% of their expenses as in-kind contributions). ICMA is following up with the partner organizations in order to obtain certifications for these contributions.

Two organizations paid for lodging expenses for the ICMA project manager in order to promote the LGEAN program. Another partner donated software to be used in the LGEAN project. ICMA is following up with the organizations to obtain appropriate certifications. ICMA also spent additional funds to further enhance the capabilities of the LGEAN project by supporting three ICMA staff members, project manager travel and other consulting expenses designed to enhance the LGEAN website. (See Tab 4B)

OIG Comment: On October 11, 2006, the recipient submitted a revised final *Financial Status Report* to EPA that reported \$100,012 as the recipient share of outlays. In response to the draft report, the recipient provided additional documentation in support of the recipient's \$100,012 cost share. Based on our review of the additional documentation, we have accepted \$81,962 and questioned \$18,050 as unsupported. The unsupported costs relate to donated services for which the recipient did not have adequate documentation to support both the donated hours and the labor rates (see page 7 of the report for further details). The documentation for one contributor confirmed that indirect costs were incorrectly included in the billing rate. For a second contributor, the recipient's documentation in response to the draft report demonstrated that the rates used for donated services were billing rates and were the same rates that the contributor (Cybergroup) used to bill the recipient for Web/database development under agreement CX82591101.

Agreement: CR82774301
Questioned costs: \$42,471

Based on actual outlays, ICMA's cost share obligation under this agreement is \$55,637. During project implementation, ICMA organized two Base Reuse/Land Use Controls Forum, one in Arlington, Virginia (February 2000) and one in San Francisco, California (June 2000). The majority of the cost share originally reported by ICMA included the value of the time that the attendees spent at each consortium. Upon further review and based on the interpretation of the Cost Share Regulations, we agree that these costs were ineligible as in-kind contributions. While attendees' time was not an eligible in-kind cost, the speakers' time would be considered an appropriate cost share item. There were several speakers at each session. ICMA is contacting the speakers to obtain current contact information. If current contact information was obtained, ICMA sent a cost share confirmation form to each speaker.

ICMA also organized an interactive workshop in Aurora, Colorado in August 2001. Each participant was an integral and a necessary part of the program because of their substantive

contributions to the discussion. Each participant was informed and expected to provide information and input for the research workshop. ICMA is contacting the 40 participants to obtain current contact information. If current contact information was obtained, ICMA sent a cost share confirmation form to each participant.

Individuals also prepared essays on various topics including environmental insurance and marketing base reuse property. ICMA is contacting the individuals to obtain copies of the essays and to collect cost share confirmation forms. ICMA also worked with base reuse experts on consultation regarding property transfer of former military facilities and on the pending workshops. ICMA is contacting these individuals to obtain cost share certification forms. (See Tab 4C)

OIG Comment: In response to the draft report, the recipient provided additional documentation to support the recipient's cost share of \$42,471. Based on our review of the additional documentation, we questioned the entire \$42,471 as unsupported.

The unsupported costs relate to donated services for which the recipient did not have adequate documentation to support both the hours and the labor rates (see page 7 of the report for further detail).

Agreement: R82870801

Questioned costs: \$176,217

ICMA's cost share obligation under this agreement is \$128,493. ICMA currently has supporting documentation for the full amount of the cost share obligation.

As part of this project, ICMA provided scholarships to key individuals to attend the Brownfields Conference in 2001 and 2002. The scholarship participants attended an interactive session where key information was gained from them. ICMA has sent certification letters to the participants in this session for 2001 and 2002.

Other activities that were part of this project included: conference calls to discuss urban revitalization, peer exchange groups; discussions about energy exchange landfill program; discussion of redevelopment efforts in general; teleconferences about environmental justice; and institutional controls workshops. ICMA is contacting participants in these activities. ICMA also incurred costs of \$89,785 in excess of funding under this agreement which will also be used to meet our cost share obligations. (See Tab 4D)

OIG Comment: On October 11, 2006, the recipient submitted a revised final *Financial Status Report* to EPA that reported \$128,493 as the recipient share of outlays. In response to the draft report, the recipient provided additional documentation in support of recipient's cost share. Based on our review of the additional documentation, we have accepted \$96,336 and questioned \$32,157 as unsupported.

The unsupported costs relate to donated services for which the recipient did not have adequate documentation to support both the hours and the rates. Also, the recipient's documentation for the contributed in-kind services included time spent by individuals who attended the brownfields conferences, including those attending under a travel scholarship. Title 40 CFR 30.23(d) provides that volunteer services may be counted as cost sharing if the service is an integral and necessary part of an approved project or program. The donated salaries for those individuals who only attended the training courses do not qualify as in-kind costs and are unallowable (see page 7 of the report for further details).

Agreement: TR83100101

Questioned costs: \$272,303

ICMA currently has supporting documentation for the full amount questioned. This agreement is ongoing and we are confident that we will meet our cost share obligations over the life of the agreement.

The cost share committed on this project involved the time for speakers or moderators, poster presenters, cosponsors and conference planning team members who were involved with the National Brownfields 2003 and 2004 conferences. The questioned costs covers cost share reported for the 2003 and 2004 conferences. ICMA has subsequently reported figures to EPA for the 2005 conference.

The certification forms that ICMA initially prepared did not include a statement providing assurance that the donated salaries were not included as part of other Federal Funds, so ICMA contacted all individuals to have them certify that they were not being paid out of Federal funds for the time they contributed towards the in-kind cost share. ICMA will continue to collect cost share on this project since it is ongoing with the 2006 Brownfields conference due to take place in November 2006. (See Tab 4E).

OIG Comment: In response to the draft report, the recipient provided additional documentation to support of the recipient's cost share of \$272,303. Based on our review of the additional documentation, we have accepted \$19,480 and questioned \$252,823 as unsupported. The unsupported costs relate to donated services for which the recipient did not have adequate documentation to support both the hours and the labor rates (see page 7 of the report for further details).

5. Unsupported Program Income:

You questioned \$1,796 of program income because you stated that the reported program income totaled \$11,541 but the detail only supported \$9,745. ICMA changed its accounting system from System I to Costpoint in fiscal year 2002. The detail of the \$1,796 was in the old system. Reports are attached from both accounting systems totaling \$11,541. (See Tab 5)

OIG Comment: The recipient provided adequate documentation to support the questioned program income of \$1,796. We thus are omitting this issue from the report.

6. Reporting Error on Financial Status Report

You reported that ICMA made a reporting error of \$49,130 on a final Financial Status Report. In response we offer that this did not change the federal share of outlays and we have resubmitted a corrected final Financial Status Report. (See Tab 6)

OIG Comment: The recipient provided a correct revised final *Financial Status Report* for agreement CX82580501. We thus are omitting this issue from the report.

Conclusion

Based on the foregoing, there is no question that in all cases ICMA satisfied not only the competition requirements for procurement under assistance agreements but that ICMA took the reasonable and necessary steps under the regulations to arrive at fair and reasonable prices.

ICMA is continuing to obtain more data, and we expressly reserve the right to provide you with additional information as it becomes available.

As you can see from our responses above, ICMA has made and continues to make every effort to comply with 40 CFR Part 30; and we will continue to review and strengthen our policies and procedures to ensure full compliance with EPA's regulations. We would appreciate an opportunity to meet with you to discuss our response in an effort to work closely with you to resolve as many issues at this stage of the process so that they are not included in any final report that your office may issue at a later time. If you have any questions regarding our response, please feel free to contact me at 202-962-3610 or Uma Ramesh at 202-962-3621. We look forward to hearing from you.

Sincerely,



Robert O'Neill
Executive Director
International City/County Management Association

OIG Comment: Along with the response above, the recipient also provided hardcopy documentation to support its position. Due to the large volume of data, we did not include it here with the recipient's response but will make it available upon request.

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