



U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

Audit Report

Department of Energy's Controls
over Recovery Act Spending at the
Idaho National Laboratory



OAS-RA-L-11-10

July 2011

Memorandum

DATE: July 21, 2011

Audit Report Number: OAS-RA-L-11-10

REPLY TO

ATTN OF: IG-35 (A10RA038)

SUBJECT: Report on "Department of Energy's Controls over Recovery Act Spending at the Idaho National Laboratory"

TO: Principal Deputy Assistant Secretary, Office of Environmental Management, EM-1

INTRODUCTION AND OBJECTIVE

The Department of Energy's (Department) Office of Environmental Management (EM) oversees two major contracts for cleaning up the legacy contamination at the Idaho National Laboratory (INL). The 7 year, \$2.9 billion contract with CH2M♦WG Idaho, LLC (CWI), was established in 2005, for a wide range of INL clean-up functions and is scheduled to end September 30, 2012. Under this contract, CWI was entitled to incentive fees if it completed work for less than target costs. The second contract, valued at \$843 million, was with Bechtel BWXT Idaho, LLC (Bechtel) to operate the Advanced Mixed Waste Treatment Project and is scheduled to end in Fiscal Year 2011.

Under the American Recovery and Reinvestment Act of 2009 (Recovery Act), the Department provided CWI with \$422.75 million and Bechtel with \$22.5 million to accelerate the INL cleanup effort. CWI's funds were for, among other things, accelerating the deactivation and decommissioning (D&D) of nuclear and radiological facilities, retrieving and processing remote handled transuranic waste, and waste exhumation at the Subsurface Disposal Area (SDA). Bechtel's funds were for accelerating the treatment, shipment, and disposal of transuranic and mixed low-level waste. EM planned to complete its INL Recovery Act work by September 30, 2011.

Because of the significance of this Recovery Act work and the plan to accelerate cleanup operations, we initiated this audit to determine if the Department efficiently and effectively managed Recovery Act funded projects under the CWI and Bechtel contracts.

CONCLUSION AND OBSERVATIONS

We found that CWI and Bechtel were generally on schedule to meet established cost and schedule estimates for Recovery Act funded work. Additionally, for the projects that we reviewed, we did not identify any material issues with CWI and Bechtel compliance with selected Recovery Act requirements, including the segregation of funds. However, for the

CWI Recovery Act funded work, we identified certain weaknesses in the manner in which the Idaho Operations Office managed the CWI contract and measured performance for incentive fee determination purposes.

Recovery Act Performance Measurement

Our review disclosed that the Department measured CWI's cost performance for the Recovery Act funded D&D and SDA waste exhumation work against the original target cost of \$218.8 million established in 2005, rather than using the more current, detailed cost estimate of \$120.8 million, which was developed to fund this Recovery Act work. In particular, the Department's 2005 contract with CWI established a target cost of \$218.8 million to complete a portion of the D&D and SDA projects. However, in 2008, the Department postponed CWI's work on these projects beyond the contract's 2012 expiration date due to changing funding priorities. Specifically, the work was postponed when the cost of another project within the scope of the contract, the Sodium Bearing Waste Project, increased. Postponing the D&D and SDA activities beyond the term of the contract effectively removed these activities from the contract's scope. In 2009, the Department decided to use Recovery Act funding to perform the previously postponed D&D and SDA work. As directed by the Department as a prerequisite for receiving Recovery Act funding, CWI prepared a detailed estimate in 2009, which determined that the work could be completed at a cost of \$120.8 million, or approximately \$98 million less than the \$218.8 million target cost established in 2005. The Department used the \$120.8 million estimate to obligate Recovery Act funds for the previously postponed work and to require the contractor to complete the work by September 2011, effectively bringing this work back into the contract. However, the Department continued to measure the contractor's cost performance for incentive fee determination purposes against the original \$218.8 million target cost established in 2005.

When we discussed this discrepancy with management, Department officials asserted that the original cost estimate of \$218.8 million was appropriate and fair to use for incentive fee determination purposes since this amount was established in the competitively awarded contract in 2005. Management stated that it would not be fair to reduce the contractor's fee earning potential by measuring performance against the lower cost estimate since the reason for the lower estimate was the contractor's efficiencies in completing this work. Departmental management also asserted that since the work was merely postponed and was not removed from the contract, it was appropriate to measure performance against the contracted cost estimate of \$218.8 million.

We found, however, that the Department had not followed acquisition and project management requirements when it determined that the D&D and SDA projects could not be performed within the contract term. Federal Acquisition Regulation 52.243-2, *Changes - Cost Reimbursement*, which is incorporated by reference in the CWI contract, requires the Contracting Officer to make an equitable adjustment when the Government's actions change the time of performance of any work under the contract. We noted that the Contracting Officer was acting in accordance with the contracting regulations by adding scope that increased the cost of the Sodium Bearing Waste Project. However, since that

action affected the contractor's ability to complete the remaining portions of D&D and SDA work, the Contracting Officer should have made an equitable adjustment to the contract to remove that scope of work.

Additionally, DOE Order 413.3B, *Program and Project Management for the Acquisition of Capital Assets*, states that the performance baseline change process should not be used to circumvent proper change control management and contract management. However, rather than formally modifying the contract to remove the work scope, as required, the Department used the schedule baseline to postpone the work to occur after the end of the contract period. The Department retained the work in the contract with the hope that other clean-up work might be completed under cost estimates and the resulting savings could be applied to this scope of work. Had action been taken to modify the contract, as required, the Department could have renegotiated the target cost in 2009, when Recovery Act funds became available.

Impact on Performance Incentive Fees

Had the Department renegotiated the work in question and been successful in reducing the price below the original \$218.8 million estimate, it would have been able to avoid payment of at least a portion of the incentive fee, while still providing fair compensation to the contractor. The CWI contract has a cost-plus-incentive-fee structure that permits CWI to earn an incentive fee based on a comparison of actual costs to target cost estimates. For every dollar that actual costs are below target costs, CWI keeps 30 cents. For example, if it completes the work at the \$120.8 million cost estimated in 2009, CWI will show a cost savings of \$98 million based on the original contract estimate of \$218.8 million, which would result in an incentive fee of about \$29 million. Any reduction to the \$218.8 million estimate through renegotiation could have reduced this incentive fee payment. While we recognize that the Department would have, in all likelihood, had to compensate the contractor for the lost opportunity to earn an incentive fee had it removed the work scope in 2008, neither the Department nor we can determine the net dollar effect on payments to the contractor that would have resulted from the Department removing the work scope in 2008 and renegotiating its cost in 2009.

In response to our concerns about the large amount of incentive fee CWI could earn for these projects, management stated that the contract modification related to the Recovery Act and the incentive fee potential cannot be looked at in isolation from the other major changes that occurred on the contract and that the Government will pay significantly less incentive fee once the contractor's performance under the entire contract is considered. For example, another major project in the contract, the Sodium Bearing Waste Project, is experiencing significant cost increases such that the contractor will bear the extra costs to complete the project. This will reduce the incentive fee the contractor will earn on the overall contract performance. Management stated that to get a true picture of how much additional incentive fee the Government will pay, these factors should be added to the equation. While we acknowledge management's perspective, we believe that each component of the project should be evaluated and actively managed against its own cost account.

SUGGESTED ACTIONS

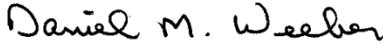
Effective contract administration has long been a challenge for the Department. It is the Department's responsibility to ensure that the best value is obtained for the Government and that changes to the contract are effectively managed. Accordingly, we suggest that the Principal Deputy Assistant Secretary, Office of Environmental Management, ensure that contracts are being actively managed by directing the Contracting Officer at its sites to:

1. Formally remove work scope from contracts when work is pushed beyond the terms of the contract;
2. Renegotiate performance incentives fees using current cost and pricing data, where appropriate; and,
3. Ensure that contracts are managed in tandem with baseline changes.

LESSONS LEARNED/BEST PRACTICES

On July 13, 2011, the Office of Inspector General issued an audit report concerning the Department and EM's efforts to decontaminate and decommission the K-25 Building at the Oak Ridge Reservation, "[*The Department of Energy's K-25 Building Decontamination and Decommissioning Project*](#)," (DOE/OIG-0854, July 13, 2011). That report raised cost and schedule issues regarding the K-25 Building Project (K-25). In our view, there are aspects of contract administration in common between the K-25 experience and the remediation effort at Idaho, which is the subject of this report. We believe that the suggested actions noted above represent lessons learned and best practices which may have application at EM sites throughout the Department's complex.

No formal recommendations are being made in this report and a response is not required.


Daniel M. Weeber, Director
Environment, Technology, and
Corporate Audits Division
Office of Inspector General

Attachment

cc: Manager, Idaho Operations Office, NE-ID
Director, Office of Management, MA
Assistant Director, Office of Risk Management and Financial Policy, CF-50
Audit Resolution Specialist, Office of Risk Management and Financial Policy, CF-50

Team Leader, Office of Risk Management and Financial Policy, CF-50
Audit Liaison, Idaho Operations Office, NE-ID
Audit Liaison, Office of Management, MA-1.1
Audit Liaison, Environmental Management, EM-4.1

SCOPE AND METHODOLOGY

The audit was performed from April 2010 to March 2011, and included fieldwork at the Idaho National Laboratory. The audit covered project documents from the Idaho Operations Office (Idaho) as well as contractors CH2M♦WG Idaho, LLC (CWI) and Bechtel BWXT Idaho, LLC (Bechtel). To accomplish the objective of this audit, we:

- Obtained and reviewed laws and regulations relevant to the American Recovery and Reinvestment Act of 2009 (Recovery Act);
- Obtained and reviewed the Department of Energy's (Department), the Office of Management and Budget's and the Idaho Operations Office's implementing procedures concerning Recovery Act requirements;
- Reviewed findings from prior audits regarding Recovery Act activities;
- Reviewed the CWI and Bechtel contracts;
- Held discussions with Department and contractor officials regarding Recovery Act activities for the various projects; and,
- Performed transaction testing for Recovery Act funded transactions.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. Also, we examined the establishment of performance measures in accordance with the *Government Performance and Results Act of 1993* as it relates to the audit objective and found that the Department had established performance measures related to the use of Recovery Act funds for environmental management projects. Finally, since we relied on automated data processing information to accomplish our audit objective, we conducted an assessment of the reliability of computer processed data.

The Idaho Operations Office waived the exit conference.

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