



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

Audit Report

Audit of Environmental Cleanup Projects Funded by the Recovery Act at the Y-12 National Security Complex



OAS-RA-L-11-02

December 2010

- A control designed to prevent the employment of illegal aliens by requiring that employers verify employment eligibility with the Department of Homeland Security had been omitted from all Recovery Act subcontracts.

These clauses were designed to ensure that the Department enforced important Recovery Act requirements and other contract requirements. Perhaps most importantly, their use would have further reduced the risk of illegal aliens gaining access to Y-12. After we notified them of the problem, Y-12 officials reported that they had taken actions to mitigate these concerns.

Incorporation of Special Provisions Clause

Y-12 had not always either included or maintained an up-to-date *American Recovery and Reinvestment Act of 2009 Special Provisions* (Special Provisions) clause in its subcontracts. Specifically, Y-12 had not incorporated in its internally developed Special Provisions clause a Department required *Prohibition on Use of Funds* (Use of Funds) clause which prohibits Recovery Act funding from being used for items such as a casino, golf course, or aquarium. In short, none of Y-12's subcontracts funded by the Recovery Act included the Use of Funds clause.

Additionally, Y-12 had not included its Special Provisions clause in one of the Recovery Act subcontracts we reviewed and had not incorporated the current version of the Special Provisions clause in two others. According to a Site Office Contracting Officer, each subcontract should be made current when the Special Provisions clause is revised in either the next subcontract modification or within a reasonable timeframe. However, one of the subcontracts we reviewed was modified four times without incorporating the latest revision. Additionally, we found a second subcontract that was not modified although 7 months had elapsed since the current Special Provisions clause was issued.

Y-12 created the overall Special Provisions clause to capture all of the Recovery Act requirements such as compliance with the Use of Funds clause and Davis-Bacon Act requirements concerning the payment of prevailing wage rates. Y-12 revised the Special Provisions clause three times, with the latest revision dated December 2009, as the Department's implementation of the Recovery Act evolved. We noted that Y-12's Procurement Handbook did not include a requirement to ensure that Y-12 flowed-down the Special Provisions clause into new or modified subcontracts. We concluded that the lack of guidance on flow-down procedures likely contributed to the Special Provisions clause not being uniformly included and/or updated in subcontracts.

Employment Eligibility Verification Clause

Y-12 also had not included a required clause that was intended to ensure employment eligibility in the Recovery Act subcontracts we reviewed. The overall purpose of the *Employment Eligibility Verification* clause was to enforce the immigration laws of the United States, including the detection and removal of illegal aliens and the imposition of legal sanctions against contractors that hire illegal aliens. Y-12's prime contract with the

Department required the flow-down of the *Employment Eligibility Verification* clause into all subcontracts with a value of more than \$3,000 issued or modified after December 2009. The Department of Homeland Security designated the *E-Verify* system as the electronic employment eligibility verification system that must be utilized by all Federal contractors. The system compares information obtained from an employee to data from the Department of Homeland Security and Social Security Administration records to confirm employment eligibility. The Federal Acquisition Regulation's *Employment Eligibility Verification* clause mandates the use of *E-Verify* to ensure compliance with immigration laws.

Although the *Employment Eligibility Verification* clause was effective in December 2009, Y-12 had not flowed down the clause to its subcontractors until September 2010. Specifically, Y-12 management decided it was more efficient to reference the clause in its General Terms and Conditions, which were undergoing revision, rather than incorporating it independently into each subcontract. Y-12 did not begin incorporating the revised General Terms and Conditions into subcontracts until September 2010. This is significant given the risk of illegal alien workers gaining access to Y-12. The risk of such access is more than notional as demonstrated by the Office of Inspector General report *Security Access Controls at the Y-12 National Security Complex* (DOE/IG-0691, June 2005) which found that, in the past, illegal alien construction workers had gained access to Y-12 on multiple occasions.

Y-12 management stated it had mitigating controls to ensure that only United States citizens are issued photo badges which are required for access to the Y-12 site. In particular, Y-12's badge issuance procedures include a requirement to provide acceptable proof of citizenship such as a passport or certified birth certificate. However, Y-12 management acknowledged that it was not required to verify the validity of proof of citizenship as part of its badging process, and we confirmed, that Y-12 does not verify the information with independent parties. Finally, management pointed out that even if unverified workers had gained access to Y-12 they did not represent a security risk since areas with Recovery Act work were extensively prescreened to identify and remove or segregate classified information or materials prior to the beginning of work, and individuals who did not have a security clearance were required to be escorted at all times.

While Y-12's controls may have been beneficial, they did not provide the independent verification of employment eligibility documentation available through the *E-Verify* system as required by Federal regulations. According to the Department of Homeland Security, *E-Verify*, a process which facilitates the detection of fraudulent information checks, disclosed that about three percent of the workers reviewed through the system could not be confirmed as eligible for employment in the United States. Had *E-Verify* been fully employed, the risk of illegal aliens working at Y-12 would be further reduced.

MITIGATING ACTIONS

When our findings were provided to Y-12 management, they informed the audit team that actions had been initiated to ensure that current applicable clauses contained in its prime contract were flowed-down to subcontractors. Specifically, Y-12 updated its Special Provisions clause to include the Use of Funds clause. Additionally, Y-12 Procurement told

us that it was reviewing existing subcontracts to ensure they are modified to include the new General Terms and Conditions. As for the three subcontracts which lacked the current Special Provisions clause, we were informed that Y-12 took action to correct the omissions after we brought this to their attention. Further, Y-12 procurement personnel have begun utilizing a mandatory checklist that specifically addresses verifying flow-down of the Special Provisions clause to new subcontracts. This is particularly significant given that Y-12 procurement will be utilizing additional subcontracts valued at \$44 million in Recovery Act funding for two other environmental cleanup projects during Fiscal Year 2011. Funding for these projects will come from savings realized from other environmental cleanup projects at Y-12. Additionally, Y-12 Procurement reported that they had added the *Employment Eligibility Verification* clause to the General Terms and Conditions section in all existing subcontracts and were incorporating it into new subcontracts. Management committed to ensure that all existing subcontract employees are verified through the *E-Verify* system.

Finally, during our audit, Y-12's Ethics and Internal Audit organization completed a review of Recovery Act subcontracting activities. To its credit and as a result of our work, Y-12 Internal Audit adjusted the scope of its review to address the flow-down of Recovery Act requirements. Internal Audit management reported that the review did not identify any issues.

The mitigating actions initiated by Y-12 should, if successfully implemented, resolve the concerns discussed in this report. Accordingly, we are not making formal recommendations. However, we suggest that the Y-12 Site Office provide continued oversight and monitoring of these issues.

We appreciated the cooperation of the various Department elements and Y-12 during this effort.



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Attachment

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SCOPE AND METHODOLOGY

This audit was performed between March 2010 and December 2010 at the Y-12 National Security Complex (Y-12), Oak Ridge Office, and Y-12 Site Office, all located in Oak Ridge, Tennessee; and, Department of Energy Headquarters (Headquarters), located in Washington, DC. Our audit included a review of selected Y-12 Recovery Act projects. To accomplish the audit objective, we:

- Assessed compliance with policies and procedures, laws and regulations, and contract terms applicable to Y-12 environmental cleanup activities funded by the Recovery Act;
- Interviewed key personnel at Headquarters, the Oak Ridge Office, Y-12 Site Office, and B&W Y-12;
- Reviewed and tested a judgmental sample of B&W Y-12 subcontracts funded by the Recovery Act including the flow-down of required clauses, central contractor registration, utilization of competition, and small business consideration;
- Determined the baseline and progress of selected Y-12 environmental cleanup projects funded by the Recovery Act including an evaluation of Recovery Act funds receipt, segregation, and tracking; and,
- Reviewed personnel activities such as the prevention of employing illegal immigrants, specialized training, and worker safety.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. The audit included tests of controls and compliance with laws and regulations necessary to satisfy the 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. During the audit, we reviewed performance measures in accordance with the *Government Performance and Results Act of 1993* relevant to environmental cleanup activities. We found that Y-12 had performance measures specifically addressing the environmental cleanup activities funded by the Recovery Act. Additionally, we conducted a limited reliability assessment of computer processed data, and determined that the data was sufficiently reliable to achieve our audit objective.

Management waived an exit conference.

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