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

JUL 14 2010

THE ADMINISTRATOR

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I am reporting a violation of the Antideficiency Act as required by 31 U.S.C. §1351. The violation of the Antideficiency Act occurred in one of the U.S. Environmental Protection Agency's two-year appropriation accounts [683/40107 and 684/50107] titled "Science and Technology" in the amount of $193,545. The violation occurred on August 25, 2004, in connection with a contract awarded by the Cincinnati Procurement Operations Division, Office of Acquisition Management for the National Risk Management Research Laboratory of the EPA's Office of Research and Development.

Background

The Safe Drinking Water Act, as amended, requires the EPA to establish a list of microbiological and chemical drinking-water contaminants that are unregulated. This list, referred to as the Contaminant Candidate List, is used to determine which contaminants in the nation's drinking-water systems may have to be regulated in the future.

To develop this Contaminant Candidate List, Cincinnati Procurement Operations Division contracted with a company to conduct "analysis of samples from in-house projects to examine the removal efficiencies for Contaminant Candidate List chemicals using conventional drinking-water treatments." Under the contract, the contractor had to analyze up to 750 drinking-water samples provided by the EPA over a period from August 25, 2004, through August 24, 2006, at a maximum cost of $193,545. The contract had an option for analyses of up to an additional 750 drinking-water samples at a maximum cost of $193,341. Even though the contract's period for ordering analyses of drinking-water samples was for two years, the contract performance period crossed three fiscal years: FY 2004, FY 2005 and FY 2006. However, the only available funding for the contract performance period was two-year funds: FY 2004/2005 funds.

This contract was awarded by an EPA contracting officer in the Cincinnati Procurement Operations Division. The contracting officer has since retired. Total funding of $193,545 for the contract was obligated on the August 25, 2004, date of the contract award.

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The contract did not operate as expected. The EPA's National Risk Management Research Laboratory wanted a comprehensive study of Contaminant Candidate Lists from all drinking-water samples analyzed to help them identify future potential Contaminant Candidate List chemicals for regulation. However, the contract statement of work did not reflect this comprehensive type of research. Rather, during the two years of the contract, the statement of work called for the EPA's contracting officer representative in the National Risk Management Research Laboratory to periodically provide drinking-water samples and to obtain the required analyses from the contractor. In fact, the analyses of drinking-water samples were delayed for a number of months, and, eventually only 133 drinking-water-sample analyses were ordered by the contracting officer representative by the end of June 2006 for a total cost of $39,467. Consequently, the contracting officer representative in the National Risk Management Research Laboratory during the summer of 2006 submitted a request to Cincinnati Procurement Operations Division for a two-year extension to the contract.

The two-year extension request from August 25, 2006, to August 24, 2008, raised concerns within the EPA regarding the initial obligation of funds for the contract. Upon review and analyses of the funding issues and the contract's requirements, the EPA determined there was an Antideficiency Act violation.

Findings

The Antideficiency Act states that an officer or employee of the United States shall not involve the government in a contract or obligation for the payment of money before an appropriation is made, 31 U.S.C. §1341(a)(1)(B). In this case, the contract award created an obligation to pay for services over three fiscal years, a portion of FY 2004, all of FY 2005 and most of FY 2006. However, the obligation was created at a time when only two-year funds, FY 2004/2005 funds, were available for obligation. The contract period of performance crossed into FY 2006 (August 24, 2006) even though the EPA had not received an appropriation to cover the FY 2006 obligation created by the contract award. Thus, the award of the contract and obligation of funds before the FY 2006 appropriation was made resulted in an Antideficiency Act violation.

The Antideficiency Act violation at issue here was inadvertent. Furthermore, by the time this Antideficiency Act violation was discovered, the contracting officer had retired from the EPA. We do not believe any disciplinary actions toward specific persons would be appropriate. All current EPA employees involved have been counseled and have attended training on contract issues that concern contract funding and the potential for Antideficiency Act violations with contracts that cross fiscal years. Additional actions to prevent this type of Antideficiency Act violation from reoccurring within the EPA are detailed below.

Follow-up Actions

The EPA's system for the administrative control of appropriated funds is current and has been reviewed by the OMB. However, the EPA recognizes that improved guidance, training and oversight with regard to service contracts are necessary to avoid a reoccurrence of this type of Antideficiency Act violation. Additional training has been and will continue to be provided to increase our employees' awareness of issues regarding the proper characterization and funding of EPA service contracts.

The EPA is also reviewing current agency contract and financing guidelines to ensure all offices are provided clear and complete guidance on how to identify the various types of service contracts and how to determine proper funding for these contracts. The EPA's Office of Acquisition Management has committed to review current EPA policy guidance and training materials to ensure that the proper emphasis is placed on explaining the different contracts' periods of performance and the availability of funds for obligation on such contracts.

The EPA not only increased its training on this matter, even more training is planned. Immediately following the notification of a potential Antideficiency Act violation in this case in FY 2006, steps were taken to prevent any reoccurrence. Cincinnati Procurement Operations Division staff was immediately provided in-house training on how to identify the types of services contracts, how to properly develop a statement of work for services contracts and how to determine which funds are appropriate for obligation. In October 2007, a four-day appropriations law course was conducted for contracting officers in Cincinnati Procurement Operations Division. The EPA's Office of Research and Development also sponsored a one-day appropriations law refresher training course for all of its funds control officers. The Office of Research and Development is also requiring training on acquisition management delivered on-line by the Defense Acquisition University before its contracting officer representatives are certified. In June 2009, a new EPA training course was developed and offered to all EPA funds control officers to provide information about the proper use of appropriated funds on all financial transactions. The Office of Research and Development is requiring all of its funds control officers to attend a new funds control officers' training course as it becomes available. In addition, the Office of Research and Development provided in-house training for its funds control officers on the funding of research contracts to address proper application of funds based upon the period of performance and the character of a contract's services.

The EPA is also exercising increased oversight. The Office of Acquisition Management and the Office of Research and Development have begun a dialogue to determine the best contractual approach to meeting ongoing EPA research-sampling service needs. Finally, increased oversight is being exercised by the Office of Acquisition Management for all new EPA service contracts.

I will submit an identical report of this violation to the presiding officers of each House of Congress and to the Comptroller General of the United States. Copies of those letters are enclosed for your information.

Respectfully,

Lisa P. Jackson

Enclosures

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

JUL 14 2010

THE ADMINISTRATOR

The Honorable Joseph Biden
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

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I will submit an identical report of this violation to the Speaker of the House of Representatives, the Comptroller General, and to the President of the United States. Copies of those letters are enclosed for your information.

Sincerely,

Lisa P. Jackson

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

JUL 14 2010

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The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, D.C. 20515

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