



United States Department of State
and the Broadcasting Board of Governors

Office of Inspector General

AUG 31 2011

The Honorable Edward Drusina, U.S. Commissioner
International Boundary and Water Commission
United States and Mexico, U.S. Section
4171 North Mesa Street, Suite C-100
El Paso, TX 79902-1441

Dear Commissioner ~~Drusina~~:

Enclosed for your review and action is a copy of the report *Audit of International Boundary and Water Commission Construction Contract With Ultimate Concrete, LLC, Using Funds Provided by the American Recovery and Reinvestment Act* (AUD/CG-11-17). As the action office for the report's four recommendations, please provide your response to the report and information on actions taken or planned for the recommendations within 30 days of the date of this letter. Actions taken or planned are subject to followup and reporting in accordance with the enclosed compliance response information.

The Office of Inspector General (OIG) incorporated your comments as appropriate within the body of the report and included them in their entirety as Appendix B.

OIG appreciates the cooperation and assistance provided by your staff during this audit. If you have any questions, please contact Evelyn R. Klemstine, Assistant Inspector General for Audits, at (202) 663-0372 or Richard Astor, Director, Contracts and Grants Division, at (703) 284-2601 or by email at astorr@state.gov.

Sincerely,

Harold W. Geisel
Deputy Inspector General

Enclosures: As stated.

cc: IBWC - (b) (6)
IBWC - (b) (6)
WHA/MEX - (b) (6)
A/LM/AQM - (b) (6)
RM/BP - (b) (6)

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**United States Department of State
and the Broadcasting Board of Governors**

Office of Inspector General

Office of Audits

**Audit of
International Boundary and
Water Commission Construction Contract
With Ultimate Concrete, LLC,
Using Funds Provided by the
American Recovery and Reinvestment Act**

**AUD/CG-11-17
August 2011**

Important Notice

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Office of Inspector General

PREFACE

This report is being transmitted pursuant to the Inspector General Act of 1978, as amended, and Section 209 of the Foreign Service Act of 1980, as amended. It is one of a series of audit, inspection, investigative, and special reports prepared as part of the Office of Inspector General's (OIG) responsibility to promote effective management, accountability, and positive change in the Department of State and the Broadcasting Board of Governors.

This report addresses the International Boundary and Water Commission's (IBWC) compliance with Federal, Department, and American Recovery and Reinvestment Act (Recovery Act) acquisition management practices. The report is based on interviews with employees and officials of relevant agencies and institutions, direct observation, and a review of applicable documents.

OIG contracted with the independent public accountant, Cotton & Company, LLP, to perform this audit. The contract required that Cotton perform its audit in accordance with guidance contained in the *Government Auditing Standards*, issued by the Comptroller General of the United States. Cotton's report is included.

Cotton identified three areas in which improvements could be made: complying with all relevant Federal laws and regulations, including those of the Recovery Act; having adequate processes and systems in place to collect information required to be reported by the Recovery Act; and providing complete and accurate information as required by the Recovery Act.

OIG evaluated the nature, extent, and timing of Cotton's work; monitored progress throughout the audit; reviewed Cotton's supporting documentation; evaluated key judgments; and performed other procedures as appropriate. OIG concurs with Cotton's findings, and the recommendations contained in the report were developed on the basis of the best knowledge available and were discussed in draft form with those individuals responsible for implementation. OIG's analysis of management's response to the recommendations has been incorporated into the report. OIG trusts that this report will result in more effective, efficient, and/or economical operations.

I express my appreciation to all of the individuals who contributed to the preparation of this report.

A handwritten signature in black ink, appearing to read "H. W. Geisel".

Harold W. Geisel
Deputy Inspector General

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Audit of International Boundary and Water Commission Construction Contract With Ultimate Concrete, LLC, Using Funds Provided by the American Recovery and Reinvestment Act

Office of Inspector General
U.S. Department of State
Washington, D.C.

Cotton & Company, LLP (referred to as “we” in this letter), has performed an audit of the International Boundary and Water Commission’s (IBWC) construction contract with Ultimate Concrete, LLC, using funds provided by the American Recovery and Reinvestment Act (Recovery Act). We evaluated Ultimate’s compliance with relevant Federal laws and regulations, including those of the Recovery Act; adequacy of processes and systems in place to collect information required to be reported by the Recovery Act; and accuracy and completeness of required report submissions. This performance audit, performed under Contract No. S-AQM-PD-04-D0035, was designed to meet the objective identified in the report section titled “Objective” and further defined in Appendix A, “Scope and Methodology.”

We conducted this performance audit in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. We communicated the results of our performance audit and related findings and recommendations to the U.S. Department of State Office of Inspector General.

We appreciate the cooperation provided by personnel in Department offices during the audit.

COTTON & COMPANY, LLP

A handwritten signature in black ink, appearing to read "Michael W. Gillespie".

Michael W. Gillespie, CPA, CFE
Partner

Alexandria, Virginia
August 2011

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ACRONYMS

Department	Department of State
FAR	<i>Federal Acquisition Regulation</i>
IBWC	International Boundary and Water Commission
OIG	Office of Inspector General
Recovery Act	Recovery and Reinvestment Act of 2009

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Executive Summary

The Department of State, Office of Inspector General, Office of Audits, engaged Cotton & Company, LLP (referred to as “we” in this report), to conduct performance audits of contractors that received funding provided by the American Recovery and Reinvestment Act of 2009 (Recovery Act) from the International Boundary and Water Commission (IBWC). The audit objective was to determine whether contractors that received Recovery Act funds from IBWC complied with relevant Federal laws and regulations, including those of the Recovery Act; had adequate processes and systems in place to collect information required to be reported by the Recovery Act; and submitted required reports that are accurate and complete. One contractor selected for review was Ultimate Concrete, LLC.

Ultimate was awarded two Recovery Act-funded contracts. Contract No. IBM10C0009 was awarded on June 10, 2010, for \$8,315,392.80 to furnish all labor, materials, and equipment for construction of improvements on the Upper Rio Grande Flood Control Project, Rehabilitation Improvements for Fabens Levee Reach in El Paso County and the Fort Hancock Reach in Hudspeth County, Texas. Ultimate invoiced and was paid \$3,467,859.07 for work performed through November 2010.

Contract No. IBM10C0018 was awarded on September 10, 2010, for \$9,249,621.57 to furnish all labor, materials, equipment, and incidentals necessary to complete construction for the Upper Rio Grande Flood Control Project, Sunland Park Canutillo Levee Segment, Doña Ana County, New Mexico, and El Paso County, Texas. Through November 2010, Ultimate invoiced and was paid \$1,578,703.75 on this contract.

Ultimate did not comply with all construction contract terms and conditions or relevant Federal laws and regulations, including those of the Recovery Act; did not have adequate processes and systems in place to ensure that subcontractors were aware of and met Recovery Act *Federal Acquisition Regulation* (FAR) requirements; did not have controls for ensuring compliance with the Buy American Act; and did not accurately report subcontractor data as required by the Recovery Act.

We discussed the tentative results of this audit with Ultimate officials during fieldwork and with IBWC officials on January 12, 2011. We recommended that the IBWC contracting officer require Ultimate to establish procedures for complying with FAR requirements, obtain and submit contractor certifications, establish procedures for complying with the Buy American Act, and ensure that relevant contracting information is provided timely for reporting on the Web site FederalReporting.gov.

In its response to the draft report (see Appendix B), IBWC concurred with the report’s four recommendations. Based on the response OIG considers the recommendations resolved, and they will be closed pending review and acceptance of documentation for the actions OIG specified. The response and OIG’s analysis are presented after each recommendation.

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Background

IBWC is an international body composed of the United States Section and the Mexican Section. Each section is administered independently of the other. The United States Section is a Federal Government agency and has its headquarters in El Paso, Texas. IBWC operates under the foreign policy guidance of the Department of State. The mission of IBWC is to apply the rights and obligations that the Governments of the United States and Mexico assume under the numerous boundary and water treaties and related agreements. IBWC's obligations include construction, operation, and maintenance of levees and floodway projects along the Rio Grande River.

The Recovery Act provided \$220 million to IBWC for the Rio Grande Flood Control System Project to evaluate needed repairs and/or rehabilitation of deficient portions of the flood control systems, with all funds required to be obligated by September 30, 2010. Repairs and rehabilitation entail raising levee segments to original design levels and reconstructing segments where the integrity of the structures has been compromised. The project consists of two primary phases: the Pre-construction Phase, which involves geotechnical investigations, environmental documentation, and design, and the Construction Phase, which involves project construction. IBWC projects can continue to expend Recovery Act funds for contracts as long as those funds were obligated by September 30, 2010.

Ultimate was awarded two Recovery Act-funded contracts. Contract No. IBM10C0009 was awarded on June 10, 2010, for \$8,315,392.80 to furnish all labor, materials, and equipment for construction of improvements on the Upper Rio Grande Flood Control Project and Rehabilitation Improvements for Fabens Levee Reach in El Paso County and the Fort Hancock Reach in Hudspeth County, Texas. Ultimate invoiced and was paid \$3,467,859.07 for work performed through November 2010. The Notice to Proceed was issued on July 12, 2010, with a performance period of 330 calendar days.

Contract No. IBM10C0018 was awarded on September 10, 2010, for \$9,249,621.57 to furnish all labor, materials, equipment, and incidentals necessary to complete construction for the Upper Rio Grande Flood Control Project, Sunland Park Canutillo Levee Segment, Doña Ana County, New Mexico, and El Paso County, Texas. Through November 2010, Ultimate invoiced and was paid \$1,578,703.75 on this contract. The Notice to Proceed was issued on September 28, 2010, with a performance period of 501 calendar days.

Objective

The audit objective was to determine whether contractors that received Recovery Act funds from IBWC complied with relevant Federal laws and regulations, including those of the Recovery Act; had adequate processes and systems in place to collect information required to be reported by the Recovery Act; and submitted required reports that are accurate and complete.

Results of Audit

Ultimate did not comply with all construction contract terms and conditions or relevant Federal laws and regulations, including those of the Recovery Act; did not have adequate processes and systems in place to ensure that subcontractors were aware of and met Recovery Act FAR requirements; did not have controls over ensuring compliance with the Buy American Act; and did not accurately report subcontractor data as required by the Recovery Act.

Finding A. Contractor Did Not Comply With All Contract Terms and Conditions

The contractor Ultimate did not comply with all terms and conditions of its Recovery Act construction contract. Specifically, Ultimate and its subcontractors did not enroll as Federal contractors in E-Verify within 30 days of contract award, as required by the FAR.¹ The FAR requires Federal contractors and subcontractors to enroll “as a Federal Contractor in the E-Verify program within 30 calendar days” of contract award. Ultimate also did not verify that employees were eligible to work in the United States, which is also required by the FAR.²

E-Verify is an Internet-based free program run by the U.S. Government that compares information about an employee’s employment eligibility from IBWC Form I-9, Employment Eligibility Verification, with data from U.S. Government records. If the information matches, that employee is eligible to work in the United States. If there is a mismatch, E-Verify alerts the employer, and the employee is allowed to work while he or she resolves the problem within 8 business days. The program is operated by the Department of Homeland Security in partnership with the Social Security Administration.

Also, Ultimate did not consistently maintain evidence that it verified employee eligibility to work in the United States. Of the 61 employee files reviewed, only one Form I-9 was properly completed. Except for four employee files that were missing, forms were available for the other employees, but most of the forms did not have signatures of the contractor to indicate that the information had been validated.

Instructions for Forms I-9 require all employees (citizen and noncitizens) hired after November 6, 1986, and working in the United States to complete the form, and the employers must retain the completed forms for 3 years after the date of hire or 1 year after the date employment ends, whichever is later.

Ultimate management officials stated that they were unaware of the requirement to use the E-Verify system. Ultimate did not have controls to ensure that eligibility verification documents were consistently complete and accurate.

¹ FAR 52.222-54(b)(1)(i) and (e), “Employment Eligibility Verification.” (Jan. 2009)

² FAR 52.222-54(b)(1)(ii)-(b)(1)(iii).

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In addition, Ultimate did not have a code of business ethics, as required by the FAR.³ Specifically, a contractor is required to have, “within 30 days after contract award,” a “written code of business ethics and conduct” and to make the code available to every employee working on the contract. The FAR⁴ also requires the contractor to “exercise due diligence to prevent and detect criminal conduct” and to “otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”

Ultimate officials stated that they were unaware of the requirement to have a code of conduct in place. Without adequate controls in place, the contractor may not be able to identify potential areas of waste, fraud, or abuse in its Federal contracting. In addition, contractor personnel may not understand their roles in or identify methods for reporting suspected waste, fraud, or abuse.

Finally, Ultimate and its subcontractor had no controls in place and did not ensure compliance with affirmative action. The FAR⁵ requires the contractor to take “affirmative action to ensure equal employment opportunity” and further requires contractor compliance to be “based upon its effort to achieve maximum results from its actions.” The FAR⁶ further requires the efforts to be fully documented and affirmative action steps to be implemented. Ultimate representatives stated that they were unaware of these FAR requirements.

Recommendation 1. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0009 and IBM10C0018 require that the contractor Ultimate Concrete, LLC, implement procedures to ensure that it and its subcontractors comply with *Federal Acquisition Regulation* requirements as they pertain to enrolling as a Federal contractor, ensuring employment eligibility, creating a code of business ethics and conduct, and ensuring affirmative action.

IBWC Response: IBWC concurred with the recommendation, stating that the contract with Ultimate contains the FAR-required Employment Eligibility Verification clause, which requires the contractor to enroll in the E-Verify program within 30 days of contract award. IBWC further stated that the contractor was notified to provide evidence of the code of business ethics and conduct within 15 days of the response to the audit.

OIG Analysis: Based on the response, OIG considers the recommendation resolved. The recommendation can be closed pending OIG’s review and acceptance of documentation showing that Ultimate has complied with the stated FAR requirements.

³ FAR 52.203-13(b)(1)(i)-(b)(1)(ii), “Contractor Code of Business Ethics and Conduct.” (Dec. 2008)

⁴ FAR 52.203-13(b)(2)(i)-(b)(2)(ii).

⁵ FAR 52-222-27(g), “Affirmative Action Compliance Requirements for Construction.” (Feb. 1999)

⁶ Ibid.

Finding B. Required Subcontractor Certifications Were Not Obtained

The contractor Ultimate did not obtain certification from two of its subcontractors that, at the time of award, “the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government” in accordance with the FAR.⁷ Ultimate representatives stated that they did not obtain the certifications because they work with the subcontractor on a regular basis and did not believe the certifications were necessary.

The failure to obtain the required certifications could result in subcontracts being awarded to companies that have been debarred, suspended, or proposed for debarment. We were able to verify that the subcontractors were not included in the Excluded Parties List System (EPLS), which is an electronic Web-based system that identifies those parties excluded from receiving Federal contracts.

Recommendation 2. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0009 and IBM10C0018 require that the contractor Ultimate Concrete, LLC, obtain and submit current subcontractor certification to confirm that it or its principals are not debarred, suspended, or proposed for debarment and that the contracting officer ensures that Ultimate establishes procedures to obtain these certifications before additional subcontracts are awarded.

IBWC Response: IBWC concurred with the recommendation and provided an IBWC revised payment application verification form; a directive for contractors to submit payment estimates, its list of subcontractors, and accompanying SFs 1413; and an April 29, 2011, certification from Ultimate stating that all applicable SFs 1413 had been submitted.

OIG Analysis: Based on the response, OIG considers the recommendation resolved. The recommendation can be closed pending OIG’s review and acceptance of documentation showing certifications from Ultimate and its subcontractors confirming that Ultimate or its principles are not debarred, suspended, or proposed for debarment and Ultimate’s procedures to obtain the certifications before additional subcontracts are awarded.

Finding C. Buy American Act Controls Were Not in Place

The contractor Ultimate did not have policies and procedures in place to ensure that all construction materials used on the construction projects were produced in the United States. The FAR⁸ defines “construction material” as “an article, material, or supply brought to the

⁷ FAR 52-209-6(b), “Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.” (Sept. 2006)

⁸ FAR 52.225-21(a), “Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials.” (March 2009)

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construction site” by the contractor or subcontractor “for incorporation into the building or work.” The FAR⁹ requires “unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project” be produced in the United States for Recovery Act-funded projects. This clause also implements the Buy American Act¹⁰ by providing a preference for unmanufactured domestic construction material.

Ultimate personnel incorrectly relied on the procedures it used with other Federal customers and had not considered additional Recovery Act requirements. Ultimate was able to provide us with certifications after the fact that the purchases did meet Buy American Act requirements.

Without procedures, a contractor and/or a subcontractor could be in violation of the Buy American Act, for which corrective actions can include removing and replacing the improperly purchased foreign-manufactured goods, reducing the amount of the award, or even withholding future funds.

Recommendation 3. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0009 and IBM10C0018 require that the contractor Ultimate Concrete, LLC, establish procedures to ensure that materials purchased for American Recovery and Reinvestment Act construction projects comply with the Buy American Act.

IBWC Response: IBWC concurred with the recommendation, stating that it has been requiring contractors to comply with the Buy American Act and that the contractor “is made aware” that any material that does not comply with the Act “will not be paid for and may need to be removed at contractor’s expense.” IBWC further stated that its contracting officer’s representatives assigned to each project “assure . . . the acceptability of the material furnished” by the contractor or subcontractors before “acceptance of any payment application.” IBWC also stated that its contracted support service providers “will again be directed to be more vigilant of this requirement.”

OIG Analysis: Based on IBWC’s response, OIG considers the recommendation resolved. The recommendation can be closed pending OIG’s review and acceptance of documentation showing IBWC’s certification of or an excerpt of Ultimate’s procedures for ensuring that materials purchased for Recovery Act construction projects are in compliance with requirements of the Buy American Act.

Finding D. Recovery Act Reporting Was Inaccurate and Incomplete

The contractor Ultimate did not report accurate subcontractor information on the Web site FederalReporting.gov as required for third quarter 2010 reporting. The FAR¹¹ outlines

⁹ FAR 52.225-21(b)(1)(i)-(b)(1)(ii).

¹⁰ 41 U.S.C. §§ 8301-8305.

¹¹ FAR 52.204-11(d)(9)-(d)(10), “American Recovery and Reinvestment Act, Reporting Requirements.” (March 2009)

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specific information that is to be reported, including subcontractor award information. Ultimate personnel responsible for reporting on FederalReporting.gov stated that they were unaware of the subcontract agreement at the time of reporting and therefore did not report the subcontract award information. Without complete and accurate reporting, all contract information is not available to the Government and the public, thereby defeating one goal of the Recovery Act: transparency.

Recommendation 4. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0009 and IBM10C0018 require that the contractor Ultimate Concrete, LLC, ensure that relevant contracting information is provided in a timely manner to personnel responsible for reporting on the Web site FederalReporting.gov.

IBWC Response: IBWC concurred with the recommendation, stating that the Web site “provides online training to contractors” that it agreed “may be underutilized” by the prime contractor and subcontractors. IBWC further stated that its Recovery Act recipients are required to certify that their Recovery Act reporting specialists have taken the seven “webinars [Web-based seminars].”

OIG Analysis: Based on IBWC’s response, OIG considers the recommendation resolved. The recommendation can be closed pending OIG’s review and acceptance of documentation showing that IBWC Recovery Act reporting specialists have completed the proposed training.

List of Recommendations

Recommendation 1. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0009 and IBM10C0018 require that the contractor Ultimate Concrete, LLC, implement procedures to ensure that it and its subcontractors comply with *Federal Acquisition Regulation* requirements as they pertain to enrolling as a Federal contractor, ensuring employment eligibility, creating a code of business ethics and conduct, and ensuring affirmative action.

Recommendation 2. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0009 and IBM10C0018 require that the contractor Ultimate Concrete, LLC, obtain and submit current subcontractor certification to confirm that it or its principals are not debarred, suspended, or proposed for debarment and that the contracting officer ensures that Ultimate establishes procedures to obtain these certifications before additional subcontracts are awarded.

Recommendation 3. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0009 and IBM10C0018 require that the contractor Ultimate Concrete, LLC, establish procedures to ensure that materials purchased for American Recovery and Reinvestment Act construction projects comply with the Buy American Act.

Recommendation 4. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0009 and IBM10C0018 require that the contractor Ultimate Concrete, LLC, ensure that relevant contracting information is provided in a timely manner to personnel responsible for reporting on the Web site FederalReporting.gov.

Scope and Methodology

The Department of State (Department), Office of Inspector General (OIG), Office of Audits, engaged Cotton & Company, LLP (referred to as “we” in this appendix), to conduct performance audits of contractors that received American Recovery and Reinvestment Act (Recovery Act) funds from the International Boundary and Water Commission (IBWC). One of the contractors selected for review was Ultimate Concrete, LLC, in Harlingen, Texas. The audit included Recovery Act funds expended through November 30, 2010, with fieldwork conducted in December 2010.

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 audit objectives.

To meet our audit objectives, we used the following methodology:

- Reviewed documentation available on the Internet for Ultimate and its subcontractors to evaluate their eligibility to perform on Government contracts and validate the entity status of the organizations.
- Selected and tested a sample of Recovery Act reports on the Web site FederalReporting.gov to determine whether information reported was accurate and supported.
- Determined whether Ultimate had established and functioning processes to ensure compliance with Buy American Act requirements.
- Selected and tested a sample of Ultimate- and subcontractor-certified payrolls to verify compliance with Davis-Bacon Act¹ and Copeland Act² requirements and to ensure that processes were in place to validate employment eligibility of those individuals performing on the contract.
- Reviewed and evaluated subcontracts executed by Ultimate to ensure inclusion of proper clauses, receipt of debarment certifications, notification made to IBWC of active subcontracts, and timely payments.
- Evaluated whether Ultimate and its subcontractors had proper programs in place to ensure compliance with code of business ethics, equal opportunity, and affirmative action requirements.

¹ The Davis-Bacon Act requires Federal contractors to pay prevailing wages, as defined by the Wage and Hour Division of the U.S. Department of Labor, on Federally funded or assisted construction projects.

² The Copeland “Anti-Kickback” Act prohibits Federal contractors or subcontractors engaged in building construction or repair from inducing an employee to give up compensation.

Review of Internal Controls

We reviewed the contractor Ultimate's controls to ensure its own and subcontractor compliance with contractual and regulatory requirements and determined that Ultimate did not have the following:

- Controls established to ensure compliance with contractual and regulatory requirements.
- A code of business ethics, an affirmative action program, or controls to ensure that subcontractors complied with these regulatory requirements.
- A process in place to ensure that employee eligibility requirements were verified and documented in accordance with regulations.
- A process in place to ensure that required subcontractor debarment certifications were received at the commencement of the subcontracts.
- Controls to ensure that construction materials met Buy American Act requirements.
- Appropriate controls established to submit accurate Recovery Act reports.

Implementing recommendations contained in the report will improve controls over ensuring compliance with required laws and regulations and accurately reporting Recovery Act spending to the public.

Use of Computer-Processed Data

We used payroll files, job cost data, and other financial reports from the contractor Ultimate's systems to test accuracy of its information reported on FederalReporting.gov. We also validated expenditures listed in IBWC's budgetary and billing systems to ensure accuracy of reporting on FederalReporting.gov. We found no unexplained discrepancies in the expenditure data reported. We did, however, find one inaccuracy in the data reported on FederalReporting.gov. This error occurred, however, because of Ultimate's misunderstanding of reporting requirements and was not caused by automated data system issues.

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Appendix B

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

July 19, 2011



OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

United States Department of State and the Broadcasting Board of Governors
Office of Inspector General
Attn: Evelyn R. Klemstine, Assistant Inspector General for Audits
2201 C. Street, N.W.
Washington, D.C. 20520-0308

Subject: OIG Audit of International Boundary and Water Commission Construction Contract with Ultimate Concrete, LLC.

Dear Ms. Klemstine:

We are pleased to provide you the attached responses to the findings and recommendations shown in the draft audit report entitled Audit of International Boundary and Water Commission Construction Contract with Ultimate Concrete, LLC., using Funds provided by the American Recovery and Reinvestment Act Draft Report dated March 2011.

We note that improvements have already been made in the USIBWC Acquisition Division in response to the recommendations provided in the audit report, and specific responses to each finding and recommendation are provided.

Sincerely,

Edward Drusina, P.E.
Commissioner

Attachment as Stated
cc: D. Forti, C. Parker

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Thank you for the copy of your report dated June 2011, we greatly appreciate the opportunity to respond to the report.

The USIBWC generally agrees with all of the OIG recommendations, and each recommendation and suggestion that was noted in the report is addressed below:

OIG recommendations and USIBWC response:

1. Recommendation 1. We recommend that the USIBWC contracting officer for IBWC Contract no. IBM10C0009 and IBM10C0018 require that the contractor Ultimate Concrete, LLC, implement procedures to ensure that it and its subcontractors comply with FAR requirements as they pertain to enrolling as a Federal contractor, ensuring employment eligibility, creating a code of business ethics and conduct, and ensuring affirmative action.

Response: Contracts IBM10C0009 and IBM10C0018 contain clause 52.222-54 "Employment Eligibility Verification" which requires the contractor to enroll in the E-Verify program within 30 days of contract award. Attached is the MOU or company profile page provided by E-Verify to the contractor. Because of privacy laws, Federal Agencies cannot view or gauge the contractor's personnel request efforts thru E-Verify. The contractor has been given notice to provide evidence of a code of business ethics and conduct to this office within 15 days of this response to audit.

2. Recommendation 2. We recommend that the USIBWC contracting officer for Contract IBM10C0009 and IBM10C0018 require that the contractor Ultimate Concrete, LLC, obtain and submit current subcontractor certification to confirm that it or its principles are not debarred, suspended, or proposed for debarment and that the contracting officer ensures that Ultimate establishes procedures to obtain these certifications before additional subcontracts are awarded.

Response: Attached please find the revised payment application verification form now in effect to help identify new subcontractors in the field. Also find attached directive for contractors to submit, along with their payment estimates, their list of subcontractors and accompanying SFs1413 for that pay period. Finally, also find at Item 2 of USIBWC letter dated Apr 29, 2011 (attached) certification from Ultimate that all applicable SFs1413 have been submitted. This certification is required from all ARRA recipients.

3. Recommendation 3. We recommend that the USIBWC contracting officer for IBM10C0009 and IBM10C0018 require that the prime contractor establish procedures to ensure that materials purchased for ARRA construction projects comply with the Buy American Act.

Response: The USIBWC has been requiring contractors to comply with the Buy American Act. A pre-requirement to receiving a Notice to Proceed is submission of a Quality Assurance Plan which identifies the contractor's Quality Control Program Manager. The QC Manager is responsible for implementation of the

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Buy American Act. That responsibility and ramifications for non-compliance is clearly addressed at each pre-construction conference. In turn, the contractor is made aware that any material that does not comply with the Buy-American Act will not be paid for and may need to be removed at contractor's expense. To further comply with the Act, the USIBWC Contracting Officer Representatives assigned to each project assure that prior to acceptance of any payment application the acceptability of the material furnished by the prime and its subcontractors. Contracted support service providers will again be directed to be more vigilant of this requirement. Attached please find contractor's certification that they have an established Buy American program in effect under these contracts. In addition, subcontractor confirmation of Buy American products is attached.

4. Recommendation 4: We recommend that the USIBWC contracting officer for IBM10C0009 and IBM10C0018 require the prime contractor ensure that relevant contracting information is provided in a timely manner to personnel responsible for reporting on the Web site FederalReporting.gov.

Response: The FederalReporting.gov website provides online training to contractors which we agree may be underutilized by the prime and subcontractors alike. This office has required ARRA recipients certify that their ARRA reporting specialists have taken the seven (7) webinars. The contractor's May 10, 2011 certification of this training is attached to this response.

Thank you again for the opportunity to respond to this draft report and please advise us of any follow-up questions, comments, or concerns about this response letter.

You may reach Hugo White, Acquisitions Division Chief at 915-832-4711 or Christopher Parker, Internal Audit Program Manager at 915-832-4794 or via email at Hugo.White@ibwc.gov or Christopher.Parker@ibwc.gov.