



United States Department of State
and the Broadcasting Board of Governors

Office of Inspector General

JUL 29 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 Milestone Excavation, Inc., Using Funds Provided by the American Recovery and Reinvestment Act* (AUD/CG-11-18). As the action office for Recommendations 1 and 2, please provide your response to the report and information on actions taken or planned for the two 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, Division of Contracts and Grants, 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 Milestone Excavation, Inc.,
Using Funds Provided by the
American Recovery and Reinvestment Act**

Report Number AUD/CG-11-18, July 2011

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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. Geisel", written in a cursive style.

Harold W. Geisel
Deputy Inspector General

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Audit of International Boundary and Water Commission Construction Contract With Milestone Excavation, Inc., 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 Milestone Excavation, Inc., using funds provided by the American Recovery and Reinvestment Act (Recovery Act). We evaluated Milestone’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 objectives 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
July 2011

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ACRONYMS

Department	Department of State
FAR	Federal Acquisition Regulation
FTE	full-time equivalent
IBWC	International Boundary and Water Commission
OIG	Office of Inspector General
Recovery Act	American Recovery and Reinvestment Act of 2009

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Executive Summary

The Department of State (Department), Office of Inspector General (OIG), 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 Milestone Excavation, Inc.

Milestone was awarded two Recovery Act-funded contracts. Contract No. IBM10C0005 was awarded on December 29, 2009, to furnish all labor, materials, equipment, and incidentals necessary to complete construction of the Upper Rio Grande Flood Control Project – Rehabilitation Improvements for the Rio Grande Canalization Protective Levee System, Hatch Levee System, from Hatch Siphon to Bignell Arroyo. The total contract award was \$5,499,625.75. This contract had three modifications, which increased the total contract value to \$5,642,817.26. Milestone invoiced and was paid \$2,326,521.20 for work performed through September 30, 2010.

Contract No. IBM10C0006 was awarded on December 30, 2009, to furnish all labor, materials, equipment, and incidentals necessary to complete construction of the Upper Rio Grande Flood Control Project – Rehabilitation Improvements for Canutillo Levee System from Vado Bridge to Borderland Bridge. The total contract award was \$18,795,000. This contract had three modifications, which increased the total contract value to \$19,058,377.13. Milestone invoiced and was paid \$3,467,655.26 for work performed through September 30, 2010.

Milestone generally complied with relevant Federal laws and regulations and worked to understand and comply with contract requirements. However, we did find areas for improvement. Specifically, Milestone did not comply with the E-Verify requirement in its contract, did not obtain all required certifications from its subcontractor, and did not provide accurate calculations of jobs created and retained or subcontractor award values as required for Recovery Act reporting. We recommended that the IBWC contracting officer require Milestone to comply with Recovery Act requirements.

In its response to the draft report (see Appendix B), IBWC concurred with the report’s two recommendations, which we consider resolved, pending further action.

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

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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 Preconstruction 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.

Milestone was awarded two Recovery Act-funded contracts. Contract No. IBM10C0005 was awarded on December 29, 2009, to furnish all labor, materials, equipment, and incidentals necessary to complete construction of the Upper Rio Grande Flood Control Project – Rehabilitation Improvements for the Rio Grande Canalization Protective Levee System, Hatch Levee System, from Hatch Siphon to Bignell Arroyo. The total contract award was \$5,499,625.75. This contract had three modifications, which brought the total contract value to \$5,642,817.26. Milestone invoiced and was paid \$2,326,521.20 for work performed through September 30, 2010. The Notice to Proceed was issued on February 3, 2010, with a performance period of 473 calendar days.

Contract No. IBM10C0006 was awarded on December 30, 2009, to furnish all labor, materials, equipment, and incidentals necessary to complete construction of the Upper Rio Grande Flood Control Project – Rehabilitation Improvements for Canutillo Levee System from Vado Bridge to Borderland Bridge. The total contract award was \$18,795,000. This contract had three modifications, which brought the total contract value to \$19,058,377.13. Milestone invoiced and was paid \$3,467,655.26 for work performed through September 30, 2010. The Notice to Proceed was issued on February 3, 2010, with a performance period of 456 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

Milestone had controls in place to subcontract and pay subcontractors in a timely manner. No exceptions were found when we tested for compliance with the Davis-Bacon Act, the Copeland Act, and the Buy American Act. Additionally, Milestone and its subcontractor had established programs to meet business ethics, equal opportunity, and affirmative action program requirements. However, Milestone did not comply with the E-Verify requirement in its contract, did not obtain all required certifications from its subcontractor and did not provide accurate

calculations of jobs created and retained or subcontractor award values as required for Recovery Act reporting.

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

The contractor Milestone did not comply with all terms and conditions of its Recovery Act construction contract. Specifically, Milestone did not enroll as a Federal contractor in E-Verify at the time of contract award, as required by the *Federal Acquisition Regulation* (FAR).¹ Specifically, the FAR requires Federal contractors to enroll “as a Federal Contractor in the E-Verify program within 30 calendar days” of contract award.

E-Verify is an Internet-based free program run by the U.S. Government that compares information about an employee’s employment eligibility from 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 days. The program is operated by the Department of Homeland Security in partnership with the Social Security Administration.

Milestone did not enroll in E-Verify. Rather, it used the E-Verify account of its subcontractor, Don Kelly Construction, to verify the employment eligibility of Milestone employees. After we notified Milestone of its noncompliance, it enrolled in E-Verify immediately. Therefore, we are not making a recommendation on this issue.

Finding B. Required Subcontractor Certifications Were Not Obtained

The contractor Milestone did not obtain certification from its subcontractor that at the time of award confirmed that “the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government” in accordance with the FAR.² Milestone personnel stated that they were unaware of the requirement.

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 subcontractor was not included in the Excluded Parties List System, which is an electronic Web-based system that identifies those parties excluded from receiving Federal contracts.

Recommendation 1. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0005 and IBM10C0006 ensure that the contractor Milestone Excavation, Inc., obtains certifications from its subcontractor and any future subcontractors performing on these contracts

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

² FAR 52.209-6(b), “Protecting the Government’s Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.” (Sept. 2006)

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confirming that they or their principals are not debarred, suspended, or proposed for debarment.

IBWC Response: IBWC concurred with the recommendation, stating that it will require Milestone to certify that its subcontractor is not debarred, suspended, or proposed for debarment and that it will require Milestone to provide these certifications for any future subcontractors.

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 obtained the certification from Milestone.

Finding C. Recovery Act Reporting Was Inaccurate and Incomplete

The contractor Milestone incorrectly calculated and reported the number of jobs created and retained for three of the four reporting periods tested. Specifically, it reported each employee working on the project during the period as a full-time-equivalent (FTE) employee instead of correctly reporting employees as being in part-time or full-time status. The FAR³ explains how to calculate this information. Milestone's reporting figures were, however, incorrect because its officials stated that they did not understand that aspect of the regulations. For each contract, the effect of the incorrect calculation led to an overstatement of between 2.8 and 28.9 FTE jobs reported for a contract in each reporting period.

Also, Milestone did not submit correct and complete reports for its subcontractor onto the Web site FederalReporting.gov, as required by the FAR,⁴ for its Recovery Act construction contract. Contractors are required to report specific information for "any first-tier subcontract funded in whole or in part under the Recovery Act, that is over \$25,000." This information includes the subcontract award amount. Milestone reported incorrect subcontract award amounts in all three periods for which subcontractor information was reported for both Contract Nos. IBM10C0005 and IBM10C0006. Milestone personnel could not explain the discrepancies between the actual subcontract award amounts and the amounts reported as awarded.

Without complete and accurate reporting, all contract information is not available to the Government and to the public, thereby defeating one goal of the Recovery Act: transparency.

Recommendation 2. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0005 and IBM10C0006 require the contractor Milestone Excavation, Inc., to ensure that its personnel are aware of FederalReporting.gov reporting requirements under its American Recovery and Reinvestment Act construction contracts and prepare and submit required reports that are complete and accurate.

³ FAR 52.204-11(a), "American Recovery and Reinvestment Act, Reporting Requirements." (March 2009)

⁴ FAR 52.204-11(d)(10)(iii).

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IBWC Response: IBWC concurred with the recommendation, agreeing that “online training may be underutilized by the prime and subcontractors alike.” IBWC further stated that it will require Recovery Act recipients to certify that their Recovery Act reporting specialists have taken seven “webinars [Web-based seminars] . . . within 60 days” of its 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 the Recovery Act reporting specialists have taken the webinars as specified.

List of Recommendations

Recommendation 1. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0005 and IBM10C0006 ensure that the contractor Milestone Excavation, Inc., obtains certifications from its subcontractor and any future subcontractors performing on these contracts confirming that they or their principals are not debarred, suspended, or proposed for debarment.

Recommendation 2. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract Nos. IBM10C0005 and IBM10C0006 require the contractor Milestone Excavation, Inc., to ensure that its personnel are aware of FederalReporting.gov reporting requirements under its American Recovery and Reinvestment Act construction contracts and prepare and submit required reports that are complete and accurate.

Scope and Methodology

The Department of State, Office of Inspector General, 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 contractor selected for review was Milestone Excavation, Inc., in Las Cruces, New Mexico. The audit included Recovery Act funds expended through September 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 the audit objective.

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

- Reviewed documentation available on the Internet for Milestone and its subcontractor to evaluate their eligibility to perform on Government contracts and validate the entity status of the companies.
- 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 Milestone had processes established and functioning to ensure compliance with Buy American Act requirements.
- Selected and tested a sample of Milestone- and subcontractor-certified payrolls to verify compliance with Davis-Bacon Act¹ and Copeland Act² requirements and to verify that processes were in place to validate employment eligibility of those individuals performing on the contract.
- Reviewed and evaluated subcontracts executed by Milestone to ensure inclusion of proper clauses, receipt of debarment certifications, notification made to IBWC of active subcontracts, and timely payments.

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.

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- Evaluated whether Milestone and its subcontractor had proper programs in place to ensure compliance with code of business ethics, equal opportunity, and affirmative action requirements.

We discussed tentative results of this audit with Milestone officials during fieldwork and with IBWC officials on January 12, 2011.

Review of Internal Controls

We reviewed the contractor Milestone's controls to ensure its own and subcontractor compliance with contractual and regulatory requirements. We determined that there were areas in which controls were lacking to ensure compliance with contractual and regulatory requirements. Milestone did not have a process in place to ensure that required subcontractor debarment certifications were received at the commencement of the subcontract. Milestone also did not have 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 Milestone's systems to test the accuracy of the 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. Although we found inaccuracies in the data reported on FederalReporting.gov, we determined that these inaccuracies resulted from Milestone's misunderstanding of reporting requirements and were not caused by automated data system issues.

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

June 8, 2011



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

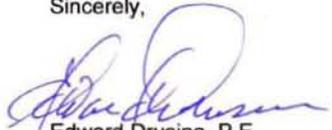
Subject: OIG Audit of International Boundary and Water Commission Construction Contract with Milestone Excavation, Inc.

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 Milestone Excavation, Inc., using Funds provided by the American Recovery and Reinvestment Act Draft Report dated May 31, 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:

(b) (6)

The Commons, Building C, Suite 100 • 4171 N. Mesa Street • El Paso, Texas 79902-1441
(915) 832-4100 • Fax: (915) 832-4190 • <http://www.ibwc.gov>

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Thank you for the copy of your report dated May 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. IBM10C0005 and IBM10C0006 ensure that the contractor Milestone Excavation, Inc., obtains certifications from its subcontractors and any future subcontractors performing on these contracts confirming that they or their principals are not debarred, suspended, or proposed for debarment.

Response: This office will require this contractor to certify its subcontractors are not debarred, suspended, or proposed for debarment and that it will provide such certification for any future subcontractors.

2. Recommendation 2: We recommend that the USIBWC contracting officer for IBM10C0005 and IBM10C0006 require the prime contractor to ensure that its personnel are aware of FederalReporting.gov reporting requirements under its ARRA construction contract and submit required reports that are complete and accurate.

Response: The FederalReporting.gov website provides online training to contractors which we agree may be underutilized by the prime and subcontractors alike. This office will require ARRA recipients certify that their ARRA reporting specialists have taken the seven (7) webinars this training within 60 days of this response to audit.

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.

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