



United States Department of State
and the Broadcasting Board of Governors

Office of Inspector General

JUN - 2 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 Longhorn Excavators, Inc., Using Funds Provided by the American Recovery and Reinvestment Act (AUD/CG-11-23)*. Based on your response, the Office of Inspector General considers Recommendation 3 closed upon issuance of this report. However, please provide your response to the report and information on actions taken or planned for Recommendations 1, 2, and 4 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)



Office of Inspector General

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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
Longhorn Excavators, Inc., Using
Funds Provided by the American Recovery and
Reinvestment Act**

Report Number AUD/CG-11-23, June 2011

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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", 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 Longhorn Excavators, 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 Longhorn Excavators, Inc., using funds provided by the American Recovery and Reinvestment Act (Recovery Act). We evaluated Longhorn’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 the 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

Michael W. Gillespie, CPA, CFE
Partner

Alexandria, Virginia
April 2011

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Acronyms

Department	Department of State
FAR	Federal Acquisition Regulation
IBWC	International Boundary and Water Commission
OIG	Office of Inspector General
OMB	Office of Management and Budget
Recovery Act	American Recovery and Reinvestment Act of 2009

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 Longhorn Excavators, Inc.

Longhorn was awarded a \$19,169,159 contract on August 21, 2009, to furnish all labor, materials, and equipment for the construction of improvements on the main floodway of the Lower Rio Grande Flood Control Project located in Hidalgo County, Texas. Longhorn invoiced and was paid \$9,824,615 for work performed through June 30, 2010.

Longhorn did not comply with all relevant Federal laws and regulations, including those of the Recovery Act; did not have adequate processes and systems in place to collect information required to be reported by the Recovery Act; and did not provide complete and accurate information as required by the Recovery Act. Specifically, Longhorn did not obtain required subcontractor forms and certifications, implement Buy American Act controls, comply with all contract terms and conditions, or submit accurate and complete Recovery Act reports.

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.

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IBWC awarded Contract No. IBM09C0015 for \$19,169,159 to Longhorn Excavators, Inc., on August 21, 2009. The contract was to furnish all labor, materials, and equipment for the construction of improvements on the main floodway of the Lower Rio Grande Flood Control Project located in Hidalgo County, Texas. Longhorn invoiced and was paid \$9,824,615 for work performed through June 30, 2010. As of July 2010, there were four modifications, which adjusted the total value of the contract to \$17,652,679. The Notice to Proceed was issued on September 1, 2009, with a performance period of 605 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 were accurate and complete.

Results of Audit

Longhorn 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 to collect information required to be reported by the Recovery Act; and did not provide information in Recovery Act reports that was accurate and complete.

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

The contractor Longhorn did not comply with all terms and conditions of its Recovery Act construction contract. It 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. Longhorn also did not verify that its 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 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.

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

² Ibid., (b)(1)(ii)-(b)(1)(iii).

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Longhorn representatives stated that they did not initiate verification of employment eligibility of Longhorn employees within E-Verify because they were unaware of the requirement. In addition, Longhorn verified employee Social Security Numbers using the Social Security Administration Web site and believed that the action was sufficient for compliance.

Also, Longhorn did not ensure employment eligibility verification or existence of procedures to ensure verification of citizenship for its subcontractors. Specifically, one subcontractor did not have U.S. Citizenship and Immigration Services Forms I-9 on file for eight employees who worked on the Recovery Act construction project.

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

In addition, Longhorn did not have a business ethics awareness and compliance program or an internal control system, both of which are 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.”

Longhorn officials stated that although they had an established code of conduct, the code had not been reviewed or updated since 2001. We believe that an updated code of conduct, and proper adherence to the code, could eliminate improper conduct in connection with Government contracts.

Finally, Longhorn had no controls in place and did not ensure compliance with affirmative action. The FAR⁵ requires contractors 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. Longhorn representatives stated that they were unaware of these FAR requirements.

Recommendation 1. We recommend that the International Boundary and Water Commission contracting officer for IBWC Contract No. IBM09C0015 require that the contractor Longhorn Excavators, Inc., 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, and ensuring equal employment opportunity.

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

⁴ Ibid., (b)(2)(i)-(b)(2)(ii).

⁵ FAR 52.222-27(g), “Affirmative Action Compliance Requirements for Construction.” (February 1999).

⁶ Ibid.

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IBWC Response: IBWC concurred with the recommendation, stating that the contract with Longhorn “contains clause 52.222-54, ‘Employment Eligibility Verification’ which requires the contractor to enroll in the E-Verify program within 30 days of contract award.” Therefore, according to IBWC, “[A]ll contractors required to [enroll in] E-Verify will be required to submit the evidence of registration by submitting the MOU [memorandum of understanding] or company profile page as provided by E-Verify within 30 days of contract award.” IBWC further stated that the contracting officer for this contract “will remind this contractor of his obligation to enroll (as previously addressed in our pre-construction conference) immediately.”

OIG Analysis: Based on IBWC’s response, OIG considers the recommendation resolved. The recommendation can be considered closed pending OIG’s review and acceptance of documentation showing that the contractor has enrolled in E-Verify.

Finding B. Required Subcontractor Forms and Certifications Were Not Obtained

The contractor Longhorn did not obtain all required forms from its subcontractors. The FAR⁷ requires contractors to deliver to the contracting officer a completed Office of Management and Budget (OMB) Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States “[w]ithin 14 days after the award of any subsequently awarded subcontract.” This form represents the subcontractor’s acknowledgement of the FAR clauses included in subcontractor contracts. Longhorn did not obtain SFs 1413 from two of its eight subcontractors: Izaguirre Engineering Group and Regional Cities Services Corporation. The contractor’s representatives stated that they did not think they needed to obtain the form from Izaguirre and failed to obtain the form from Regional Cities.

Longhorn did not obtain certifications from all eight of its subcontractors at the time of award confirming 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.⁸ Longhorn representatives stated that they did not obtain the certifications because they work with the subcontractors on a regular basis and did not believe the certifications were necessary.

The failure to obtain required forms and certifications could result in subcontractors’ being unaware of applicable FAR clauses and/or of 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, 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 contracting officer for IBWC Contract No. IBM090015 ensure that the

⁷ FAR 52.222-11(d)(2), “Subcontracts (Labor Standards).” (July 2005).

⁸ FAR 52.209-6(b), “Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.” (September 2006).

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contractor Longhorn Excavators, Inc., requires its subcontractors to submit Office of Management and Budget Forms 1413, Statement and Acknowledgement, and requires Longhorn to retroactively obtain Forms 1413 from the two subcontractors that did not submit the forms to IBWC. The IBWC contracting officer should also ensure that Longhorn retroactively obtains certifications from all subcontractors supporting that the subcontractors or their principals are not debarred, suspended, or proposed for debarment.

IBWC Response: IBWC concurred with the recommendation, stating that the contracting officer for the contract will require OMB Forms 1413 to be submitted “as applicable” and that it will require contractors, “[f]or all current and future contracts,” to submit, along with their payment estimates, their list of subcontractors and accompanying SFs 1413 for that pay period. IBWC further stated that the payment applications verification form “will be modified to assure compliance.”

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 IBWC’s requirement for contractors to submit, along with their payment estimates, their list of subcontractors and accompanying SFs 1413 for that pay period. IBWC should also provide a copy of the revised payment applications verification form.

Finding C. Buy American Act Controls Were Not In Place

The contractor Longhorn did not have policies and procedures in place to ensure that all construction materials used on the construction project were produced in the United States. The FAR⁹ defines “construction material” as “an article, material, or supply brought to the construction site” by the contractor or subcontractor “for incorporation into the building or work.” The FAR¹⁰ requires, “unless an exception applies, . . . all iron, steel, and other manufactured goods used as construction material in the project” to be produced in the United States for Recovery Act-funded projects. This clause also implements the Buy American Act¹¹ by providing a preference for unmanufactured domestic construction material.

One Longhorn subcontractor purchased construction materials, and Longhorn relied on the subcontractor to comply with the Buy American Act requirements. The subcontractor did not, however, have procedures in place to ensure that all construction materials used on the project were produced in the United States. In this instance, we verified that materials used to date were produced in the United States.

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

⁹ FAR 52.225-21(a), “Required Use of American Iron, Steel, and Other Manufactured Goods—Buy American Act—Construction Materials.” (March 2009).

¹⁰ Ibid., (b)(1)(i)-(b)(1)(ii).

¹¹ 41 U.S.C. §§ 8301-8305 (formerly 41 U.S.C. §§ 10a-10d).

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 contracting officer for IBWC Contract No. IBM09C0015 require that the contractor Longhorn Excavators, Inc., 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 IBWC “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 Buy-American Act will not be paid for and may need to be removed at contractor’s expense.” IBWC further stated: “To further comply with the Act, the IBWC 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 [contractor] and its subcontractors. 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 closed.

Finding D. Recovery Act Reporting Was Inaccurate and Incomplete

The contractor Longhorn incorrectly calculated and reported the number of jobs created and retained. Specifically, it reported each employee listed on certified payrolls as a full-time-equivalent employee instead of correctly reporting employees as being in part-time or full-time status. The FAR¹² explains how to calculate this information. Longhorn’s reporting figures were, however, incorrect because Longhorn officials stated that they did not understand that aspect of the regulations.

Also, Longhorn did not submit correct and complete reports for all eight of its subcontractors into the site FederalReporting.gov, as required by the FAR,¹³ 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 subcontractor business information, the funding agency, description of products or services provided under the contract, and place of performance. Longhorn erroneously reported the office address for all eight of its subcontractors as the primary place of performance of work under the Recovery Act construction contract, and it did not report two subcontractors during the correct timeframe. Specifically, it awarded a subcontract to Izaguirre Engineering Group in December 2009 and should have begun reporting the contractor starting with the fourth quarter 2009 report, and it awarded a subcontract to Regional Cities Services Corporation in June 2010 and therefore should have begun reporting the subcontractor starting

¹² FAR 52.204-11(a), “American Recovery and Reinvestment Act, Reporting Requirements.”

¹³ Ibid., (d)(10).

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with the second quarter 2010 report. This information was not submitted, according to Longhorn officials, because personnel were unfamiliar with or did not understand the reporting regulations.

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 4. We recommend that the International Boundary and Water Commission contracting officer for IBWC Contract No. IBM09C0015 require the contractor Longhorn Excavators, Inc., to ensure that its personnel are aware of FederalReporting.gov reporting requirements under its American Recovery and Reinvestment Act construction contract and prepare and submit required reports that are complete and accurate.

IBWC Response: IBWC concurred with the recommendation, stating that the FederalReporting.gov Web site “provides online training to contractors which we agree may be underutilized by the prime [contractor] and subcontractors alike.” IBWC further stated that it will “require ARRA recipients [to] certify that their ARRA reporting specialists have taken the [online training] within 60 days” of responding to this report.

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 reporting specialists for the Recovery Act have completed the proposed training.

List of Recommendations

Recommendation 1. We recommend that the International Boundary and Water Commission contracting officer for IBWC Contract No. IBM09C0015 require that the contractor Longhorn Excavators, Inc., 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, and ensuring equal employment opportunity.

Recommendation 2. We recommend that the International Boundary and Water Commission contracting officer for IBWC Contract No. IBM090015 ensure that the contractor Longhorn Excavators, Inc., requires its subcontractors to submit Office of Management and Budget Forms 1413, Statement and Acknowledgement, and requires Longhorn to retroactively obtain Forms 1413 from the two subcontractors that did not submit the forms to IBWC. The IBWC contracting officer should also ensure that Longhorn retroactively obtains certifications from all subcontractors supporting that the subcontractors or their principals are not debarred, suspended, or proposed for debarment.

Recommendation 3. We recommend that the International Boundary and Water Commission contracting officer for IBWC Contract No. IBM09C0015 require that the contractor Longhorn Excavators, Inc., 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 contracting officer for IBWC Contract No. IBM09C0015 require the contractor Longhorn Excavators, Inc., to ensure that its personnel are aware of FederalReporting.gov reporting requirements under its American Recovery and Reinvestment Act construction contract 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 of the contractors selected for review was Longhorn Excavators, Inc. The audit included Recovery Act funds expended through June 30, 2010. Fieldwork was conducted in August 2010 at Longhorn Excavators, Inc., headquarters in Richmond, Texas.

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 Longhorn and its subcontractors to evaluate their eligibility to perform on Government contracts and validate the organizations’ entity status.
- Selected and tested a sample of Recovery Act reports in FederalReporting.gov to determine whether information reported was accurate and supported.
- Determined whether Longhorn had processes that were established and functioning to ensure compliance with Buy American Act requirements.
- Selected and tested a sample of Longhorn- and subcontractor-certified payrolls to verify compliance with requirements of the Davis-Bacon Act¹ and the Copeland Act² 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 Longhorn to ensure inclusion of proper clauses, receipt of debarment certifications, notification made to the 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 Department of Labor or 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 Longhorn and its subcontractors had proper programs in place to ensure compliance with code of business ethics, equal opportunity, and affirmative action requirements.

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

Review of Internal Controls

We reviewed the contractor Longhorn's controls to ensure Longhorn and subcontractor compliance with contractual and regulatory requirements. We determined that Longhorn did not have appropriate controls established to ensure compliance with contractual and regulatory requirements. Longhorn did not have corporate ethics and affirmative action programs or internal control systems established to ensure compliance with these regulatory requirements. Additionally, Longhorn did not have a process in place to ensure that required subcontractor forms and debarment certifications were received at the commencement of the subcontracts. Longhorn had not implemented controls to ensure that construction materials met Buy American Act requirements. It 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 Longhorn's systems to test accuracy of Longhorn's reporting in FederalReporting.gov information. We also validated expenditures listed in IBWC's budgetary and billing systems to ensure accuracy of reporting in FederalReporting.gov. There were no unexplained discrepancies in the expenditure data reported. A number of inaccuracies were found in the data reported in FederalReporting.gov. These errors were, however, the result of Longhorn's misunderstanding of reporting requirements and were not caused by automated data system issues.

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OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

Appendix B

April 20th, 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, DC 20520-0308

Subject: OIG Audit of International Boundary and Water Commission Construction Contract with Longhorn Excavators, 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 Longhorn Excavators, Inc., 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, PE
Commissioner

cc:
Christopher Parker, Internal Audit Program Manager
Diana Forti, Chief Administrative Officer

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Thank you for the copy of your report dated March 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. IBM09C0015 require that the contractor Longhorn Excavators, Inc. 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, and ensuring equal employment opportunity.

Response: Contract IBM09C0015 contains clause 52.222-54 "Employment Eligibility Verification" which requires the contractor to enroll in the E-Verify program within 30 days of contract award. The E-Verify website does not implement web tools for Federal Agencies to assure contractor compliance. In fact, the only way to confirm registration of the company and its subs is to request from the contractor the MOU or company profile page provided by E-Verify to the contractor. However, because of privacy laws, Federal Agencies cannot view or gauge the contractor's personnel request efforts thru E-Verify. Therefore, all contractors required to E-Verify will be required to submit the evidence of registration by submitting the MOU or company profile page as provided by E-Verify within 30 days of contract award. The contracting officer for this contract will remind this contractor of his obligation to enroll (as previously addressed in our pre-construction conference) immediately.

2. Recommendation 2. We recommend that the USIBWC contracting officer for Contract IBM09C0015 ensure that the contractor Longhorn Excavators, Inc. require its subcontractors to submit OMB Forms 1413, Statement and Acknowledgement, and require the contractor to retroactively obtain Forms 1413s from the two subs that did not submit the forms to IBWC. The IBWC should ensure that the prime contractor retroactively obtains certifications from all subcontractors supporting that the subcontractors or their principals are not debarred, suspended, or proposed for debarment.

Response: The contracting officer for IBM09C0015 will require submission of required OMB Forms 1413s as applicable. For all current and future contracts, this office will require contractors to submit, along with their payment estimates, their list of subcontractors and accompanying SF1413s for that pay period. The payment applications verification form will be modified to assure compliance.

3. Recommendation 3. We recommend that the USIBWC contracting officer for IBM09C0015 require that the prime contractor establish procedures to ensure

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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 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.

4. Recommendation 4: We recommend that the USIBWC contracting officer for IBM09C0015 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.

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.

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