



United States Department of State
and the Broadcasting Board of Governors

Office of Inspector General

JUN 23 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 Ballenger Construction Company Using Funds Provided by the American Recovery and Reinvestment Act* (AUD/CG-11-19). 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)



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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
Ballenger Construction Company Using Funds
Provided by the American Recovery and
Reinvestment Act**

Report Number AUD/CG-11-19, June 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. 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
Ballenger Construction Company 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 Ballenger Construction Company using funds provided by the American Recovery and Reinvestment Act of 2009 (Recovery Act). We evaluated Ballenger’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 section titled “Objective” and further defined in Appendix A, “Scope and Methodology,” in this report.

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
June 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

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TABLE OF CONTENTS

Section	Page
Executive Summary	1
Background	1
Objective	2
Results of Audit	2
Finding A. Contractor Did Not Comply With All Contract Terms and Conditions	2
Finding B. Subcontractor Payment Process Was Ineffective	4
Finding C. Buy American Act Controls Were Not in Place	5
Finding D. Recovery Act Reporting Was Inaccurate and Incomplete	6
List of Recommendations	8
Appendices	
A Scope and Methodology	9
B International Boundary and Water Commission Response	11

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 were accurate and complete. One contractor selected for review was Ballenger Construction Company.

Ballenger was awarded a contract on October 19, 2009, to furnish all labor, materials, and equipment for construction of improvements on North Floodway 1 and the Arroyo Colorado 1 and Optional Arroyo Colorado 2 Floodways in the amount of \$20,988,112.28. Ballenger invoiced and was paid \$3,852,580.72 for work performed through September 30, 2010.

Ballenger 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, it did not comply with all contract terms and conditions, did not have proper controls over subcontractor payments, did not implement Buy American Act controls, and did not 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. IBM10C0002 for \$20,988,112.28 to Ballenger on October 19, 2009. The contract was to furnish all labor, materials, and equipment for the construction of improvements on North Floodway 1 and Arroyo Colorado 1 and Optional Arroyo Colorado 2 Floodways located in Hidalgo and Cameron Counties, Texas. Ballenger invoiced and was paid \$3,852,580.72 for work performed through September 30, 2010. As of April 23, 2010, there was one modification, which adjusted the contract value to \$19,643,481.00. The Notice to Proceed was issued on December 9, 2009, with a performance period of 330 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 to collect information required to be reported by the Recovery Act; and submitted required reports that are accurate and complete.

Results of Audit

The contractor Ballenger 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 Ballenger and its subcontractors did not comply with all terms and conditions of Ballenger's 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. Ballenger 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 FAR 52.222-54(b)(1)(ii)-(b)(1)(iii).

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

Also, Ballenger did not consistently obtain or maintain documented support for its verification of employment eligibility. Specifically, 28 of the 82 files reviewed either were missing or contained incomplete Forms I-9 to support employment eligibility. Ballenger representatives cited the inability of human resource staffing to manage the required workload for over 500 employees as the reason for the documentation being missing or incomplete. After audit fieldwork was concluded, Ballenger provided documentation showing that 27 of the 28 employees without completed Forms I-9 were eligible for employment within the United States. A Ballenger representative said that the undocumented worker chose not to contest his employment eligibility status and left the job site voluntarily on February 28, 2011.

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 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.

In addition, Ballenger 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.”

Ballenger managers stated that they were not aware of this requirement. 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, employees may not understand their roles in or identify methods for reporting suspected waste, fraud, or abuse.

Finally, we could not determine whether Ballenger’s subcontractors performed any actions to ensure compliance with affirmative action because Ballenger had no controls in place to monitor such programs. The FAR⁵ requires contractors to take “affirmative action to ensure equal employment opportunity” and further requires a contractor’s compliance to be “based upon its effort to achieve maximum results from its actions.” The FAR⁶ also requires the efforts to be “fully documented” and “affirmative action steps” to be implemented. The FAR⁷ further states

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.

⁷ FAR 52-222-27(b).

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that “each such subcontract in excess of \$10,000 shall include this clause.” Although Ballenger requested documentation of efforts by subcontractors during our fieldwork, the subcontractors did not provide evidence of any affirmative action plans or activities, and no process was in place at Ballenger to ensure that subcontractors complied with the requirements.

Recommendation 1. We recommend that the International Boundary and Water Commission contracting officer for IBWC Contract No. IBM10C0002 require that the contractor Ballenger Construction Company 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.

IBWC Response: IBWC concurred with the recommendation, stating that “[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 “will confirm” that this policy has been adopted by Ballenger Construction Company.

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 proposed procedures and confirmation of actions taken by Ballenger Construction Company to comply with these procedures.

Finding B. Subcontractor Payment Process Was Ineffective

The contractor Ballenger did not have effective controls in place to ensure that subcontractor invoices were consistently received, processed, and paid in a timely manner and that the required interest was paid for payments made after the required timeframe. The FAR⁸ requires contractors to pay subcontractors for satisfactory performance not later than 7 days from the receipt of payment by the contractor for work performed under the contract. The FAR⁹ outlines the interest to be paid to the subcontractor for late payments beginning the 8th day after payment has been received by the contractor until the date the subcontractor is paid at the computed interest rate published in the *Federal Register*. Ballenger did not have procedures in place to determine dates that invoices were received or when invoice payments were made, and it did not calculate or pay required interest.

Ballenger did not pay three of the 119 invoices reviewed in accordance with the FAR, and no interest was paid. Ballenger owed the subcontractors \$37.34 in interest payments on the three late-paid invoices.

⁸ FAR 52.232-27(c)(1), “Prompt Payment for Construction Contracts.” (October 2008)

⁹ FAR 52.232-27(c)(2)(i)-(c)(2)(ii).

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Recommendation 2. We recommend that the International Boundary and Water Commission contracting officer for IBWC Contract No. IBM10C0002 ensure that the contractor Ballenger Construction Company establishes proper controls to pay its subcontractors in accordance with the required timeframe or pay interest for each day payment is late.

IBWC Response: IBWC concurred with the recommendation, stating that it will require Ballenger Construction Company to establish controls “to pay its subcontractors in accordance with the required timeframe” or pay interest for late payments.

OIG Analysis: Based on the response, OIG considers the recommendation resolved. The recommendation can be closed pending OIG’s review and acceptance of IBWC’s documentation showing that Ballenger Construction Company has established controls to pay its subcontractors in accordance with the required timeframe or pay interest for late payments.

Finding C. Buy American Act Controls Were Not in Place

The contractor Ballenger 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 FAR¹⁰ 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 FAR¹¹ 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 Act¹² by providing a preference for unmanufactured domestic construction material.

Ballenger personnel stated that they were unaware of the requirements. Ballenger had not purchased or invoiced any materials subject to Buy American Act requirements as of our testing in November 2010.

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 contracting officer for IBWC Contract No. IBM10C0002 require that the contractor Ballenger Construction Company establish procedures to ensure that materials purchased for American Recovery and Reinvestment Act construction projects are in compliance with the Buy American Act.

¹⁰ FAR 52.225-21(a), “Required Use of American Iron, Steel, and Other Manufactured Goods–Buy American Act–Construction Materials.” (March 2009)

¹¹ FAR 52.225-21(b)(1)(i)-(b)(1)(ii).

¹² 41 U.S.C. §§ 10a-10d.

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IBWC Response: In its response, IBWC stated that it “has been requiring contractors to comply with the Buy America Act.” It further stated that one requirement for contractors before they receive a Notice to Proceed from IBWC is for the contractor to identify a Quality Control Manager, who will implement the Buy America Act. Additionally, IBWC stated that it will continue to emphasize, at pre-construction conferences, that contractor and subcontractor-purchased material that is not in compliance with the Buy America Act “will not be paid for” by IBWC and “may need to be removed at contractor’s expense.” IBWC agreed to re-enforce these measures to contractors.

OIG Analysis: Based on the response, OIG considers the recommendation closed. IBWC should follow up with Ballenger Construction to ensure that Ballenger is complying with the Buy American Act.

Finding D. Recovery Act Reporting Was Inaccurate and Incomplete

The contractor Ballenger incorrectly calculated and reported the number of jobs created and retained. Ballenger reported only jobs created instead of correctly reporting both jobs created and retained. The FAR¹³ explains how to calculate this information. Ballenger’s reporting figures were, however, incorrect because its officials stated that they did not understand that aspect of the regulations.

Also, Ballenger did not report the “Total federal amount ARRA funds received/invoiced” for two of the four reporting periods and reported the “amount” after the deadline for submission in one of the four quarterly reporting periods. The FAR¹⁴ outlines reporting requirements for the amount of funds invoiced for the reporting period and states that deadlines for reporting are the 10th of the month following the reporting period. Ballenger personnel responsible for the reporting in earlier quarters were no longer employed; therefore, the cause for the late and inaccurate reporting could not be determined.

Additionally, Ballenger did not submit correct and complete subcontractor information on the Web site FederalReporting.gov for all four reporting periods. 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.” The FAR¹⁵ outlines specific subcontractor information to be reported, including subcontractor name, date, and amount of award. Specifically, Ballenger

- Incorrectly reported four companies as subcontractors with which Ballenger does not have subcontracts and that are not performing work on the contract in all four quarters.
- Improperly reported another four companies as subcontractors before subcontracts were in place or initial performance of subcontractor work was underway.

¹³ FAR 52.204-11(d), “American Recovery and Reinvestment Act, Reporting Requirements.” (March 2009)

¹⁴ FAR 52-204-11(c).

¹⁵ FAR 52.204-11(d).

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- Failed to report three additional subcontractors that had valid subcontracts in place and subcontractor work underway in one or more quarters.

As for the accuracy of reporting award data, Ballenger reported incorrect subcontract award values for two of its subcontractors and reported incorrect subcontract award dates for four of its subcontractors. Ballenger had entered subcontractor information in its initial reporting quarter with planned subcontracting data and did not update the data with actual subcontracting activity in Web site FederalReporting.gov in the next reporting periods.

Finally, Ballenger did not determine whether subcontractors were required to report compensation information for their five most highly compensated officers and therefore did not report this information on FederalReporting.gov. The FAR¹⁶ requires the reporting of the names and compensation of the subcontractor's five most highly compensated officers if a subcontractor's revenues from Federal sources are at least \$25 million or 80 percent or more of its annual revenues. Ballenger personnel stated that they were unaware of the requirement.

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. IBM10C0002 require the contractor Ballenger Construction Company 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 it “will require” Ballenger Construction Company and other Recovery Act recipients to take online training concerning FederalReporting.gov reporting requirements.

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 IBWC has implemented requirements for Ballenger Construction Company and other Recovery Act recipients to take online training concerning FederalReporting.gov reporting requirements.

¹⁶ Ibid.

List of Recommendations

Recommendation 1. We recommend that the International Boundary and Water Commission contracting officer for IBWC Contract No. IBM10C0002 require that the contractor Ballenger Construction Company 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. IBM10C0002 ensure that the contractor Ballenger Construction Company establishes proper controls to pay its subcontractors in accordance with the required timeframe or pay interest for each day payment is late.

Recommendation 3. We recommend that the International Boundary and Water Commission contracting officer for IBWC Contract No. IBM10C0002 require that the contractor Ballenger Construction Company establish procedures to ensure that materials purchased for American Recovery and Reinvestment Act construction projects are in compliance with the Buy American Act.

Recommendation 4. We recommend that the International Boundary and Water Commission contracting officer for IBWC Contract No. IBM10C0002 require the contractor Ballenger Construction Company 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 contractor selected for review was Ballenger Construction Company, in Harlingen, Texas. The audit included Recovery Act funds expended through September 30, 2010, with fieldwork conducted in November 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 Ballenger and its subcontractors to evaluate their eligibility to perform on Government contracts and validate the organization’s 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 Ballenger had processes in place that were established and functioning to ensure compliance with Buy American Act requirements.
- Selected and tested a sample of Ballenger- 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 Ballenger to ensure inclusion of proper clauses, receipt of debarment certifications, notification made to IBWC of active subcontracts, and timely payments.
- Evaluated whether Ballenger and its subcontractors 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 Ballenger officials during fieldwork and with IBWC officials on January 12, 2011.

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 Ballenger's controls to ensure its own and subcontractor compliance with contractual and regulatory requirements. We determined that Ballenger did not have appropriate controls established to ensure compliance with contractual and regulatory requirements. It did not have controls established to ensure that its subcontractors complied with Federal Acquisition Regulation requirements as they pertain to paying subcontractors timely or ensuring employment eligibility, and it did not have a corporate ethics program or internal control systems established.

Also, Ballenger did not have controls established to ensure that subcontractors complied with Equal Employment and Affirmative Action regulatory requirements, it had not implemented controls to ensure that construction materials met Buy American Act requirements, and it did not have appropriate controls established to submit accurate Recovery Act reports.

Implementation of the recommendations contained in the report will improve controls for ensuring compliance with required laws and regulations and for 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 Ballenger's systems to test the accuracy of its 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. We found no unexplained discrepancies in the expenditure data reported, but we did find inaccuracies in the data reported in FederalReporting.gov. We determined that these errors were attributable, however, to Ballenger's misunderstanding of reporting requirements and were not caused by automated data system issues.

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Appendix B



OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

May 6, 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 Ballenger Construction Company.

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 Ballenger Construction Company, 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,

A handwritten signature in blue ink, appearing to read "Edward Drusina".

Edward Drusina, P.E.
Commissioner

Attachment as Stated

cc:
D. Forti
C. Parker

The Commons, Building C, Suite 100 • 4171 N. Mesa Street • El Paso, Texas 79902
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Thank you for the copy of your report dated April 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. IBM10C0002 require that the contractor Ballenger Construction Company 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 IBM10C0002 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 confirm and reiterate with this contractor his obligation to enroll with E-Verify (as previously addressed in our pre-construction conference) immediately.

2. Recommendation 2. We recommend that the USIBWC contracting officer for Contract IBM10C0002 ensure that the contractor Ballenger Construction Company establishes proper controls to pay its subcontractors in accordance with the required timeframe or pay interest for each day payment is late.

Response: The contracting officer for IBM10C0002 will require the contractor to submit a written certification that it has established proper controls to pay its subcontractors in accordance with the required timeframe. In addition, the contractor shall certify that it has included in each subcontract a payment clause that obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the contractor under this contract. In addition, that the subcontracts contain an interest penalty clause that obligates the contractor to pay

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to the subcontractor an interest penalty for each payment not made in accordance with the payment clause.

3. Recommendation 3. We recommend that the USIBWC contracting officer for IBM10C0002 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 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. Government personnel and contracted support service providers will re-verify these actions to emphasize the criticality of this action.

4. Recommendation 4: We recommend that the USIBWC contracting officer for IBM10C0002 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. The Commission 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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