



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
Architect-Engineer Services Contract
With S&B Infrastructure, Ltd.,
Using Funds Provided by the
American Recovery and Reinvestment Act**

Report Number AUD/CG-11-16, September 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. W. Geisel', written in a cursive style.

Harold W. Geisel
Deputy Inspector General



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Audit of International Boundary and Water Commission Architect-Engineer Services Contract With S&B Infrastructure, Ltd., 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) architect-engineer services contract with S&B Infrastructure, Ltd. (S&B), using funds provided by the American Recovery and Reinvestment Act (Recovery Act). We evaluated S&B’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 “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
September 2011

ACRONYMS

A-E	architect-engineer
Department	Department of State
FAR	<i>Federal Acquisition Regulation</i>
IBWC	International Boundary and Water Commission
IDIQ	indefinite delivery, indefinite quantity
OIG	Office of Inspector General
OMB	Office of Management and Budget
Recovery Act	American Recovery and Reinvestment Act of 2009
S&B	S&B Infrastructure, Ltd.

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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: Recovery Act Task Order Reporting Was Inaccurate and Incomplete	4
Finding C: Required Subcontractor Certifications Were Not Obtained	5
List of Recommendations	6
Appendices	
A Scope and Methodology	7
B S&B Recovery and Reinvestment Act-Funded Task Orders	9
C International Boundary and Water Commission Response	10

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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 S&B Infrastructure, Ltd. (S&B).

S&B was awarded Contract No. IBM05D0001, an indefinite delivery, indefinite quantity (IDIQ) architect-engineer (A-E) services contract on January 20, 2005. S&B was subsequently awarded 12 Recovery Act-funded task orders, totaling \$24,997,836, for geotechnical analysis, aerial survey, and design of rehabilitation improvements for the Upper and Lower Rio Grande Flood Control Projects between March 3 and September 17, 2009.

S&B generally complied with contract terms and conditions and relevant Federal laws and regulations, including those of the Recovery Act. However, S&B did not communicate whistleblower protection clauses to its employees and subcontractors, post accurate award date and subcontract information on the Web site FederalReporting.gov, or obtain required subcontractor debarment certifications.

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

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

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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.

S&B was awarded Contract No. IBM05D0001, an IDIQ A-E services contract on January 20, 2005. S&B was subsequently awarded 12 Recovery Act-funded task orders under the IDIQ contract, totaling \$24,997,836, for geotechnical analysis, aerial survey, and design of rehabilitation improvements for the Upper and Lower Rio Grande Flood Control Projects between March 3 and September 17, 2009. Recovery Act-funded task orders awarded to S&B are listed in Appendix B.

Contract No. IBM05D0001 expired on September 30, 2009. As of November 2010, S&B was performing work only to follow up on Requests for Information from the construction contractors to meet its contractual obligations. S&B invoiced \$24.7 million and had been paid \$24 million as of February 9, 2011, for the Recovery Act-funded task orders.

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

S&B generally complied with all contract terms and conditions or relevant Federal laws and regulations, including those of the Recovery Act, and had adequate processes and systems to collect information required to be reported by the Recovery Act. However, we did note three areas, which we did not consider to be significant, that need to be addressed.

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

The contractor S&B did not comply with all terms and conditions of its IDIQ A-E contract and Recovery Act-funded task orders. S&B did not post notices of employees' whistleblower protections under the Recovery Act. The *Federal Acquisition Regulation (FAR)*¹ states, "The Contractor shall post notice of employees' rights and remedies for whistleblower protections provided under section 1553 of the [Recovery Act]." S&B personnel stated that they had not received the notices and did not fully understand what was required to be done to comply with the requirements.

¹ FAR 52.203-15(a), "Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009." (March 2009)

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The contractor S&B also did not include notice of whistleblower protections under the Recovery Act in all 13 of its subcontract agreements. The FAR² states that the contractor “shall include the substance of” the previous clause in all subcontracts.

Based on our discussions with S&B personnel and reviews of subcontract execution dates, we determined that S&B was notified that the whistleblower clause applied after the subcontracts had been executed. As a result, contractor and subcontractor personnel may not be aware or have been aware of their rights and remedies for whistleblower protections under the Recovery Act, and cases of fraud, waste, or abuse may not be reported to appropriate officials. S&B officials stated that S&B’s Legal Department had forwarded pertinent sections of the Recovery Act with instructions to post notices upon receipt of posters. S&B officials also stated that they had issued, to all active Recovery Act-funded subcontractors, a supplemental agreement to amend each subcontract to include the required clauses.

Recommendation 1. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract No. IBM05D0001 ensure that the contractor S&B Infrastructure, Ltd. (S&B), obtains and posts notices of employees’ whistleblower protections under the American Recovery and Reinvestment Act of 2009.

IBWC Response and OIG Analysis: IBWC concurred with the recommendation, stating that S&B “will be advised to comply with this requirement and post notices of employee’s whistleblower protections under ARRA” and that certification from S&B will be required by August 27, 2011.

Based on the response, OIG considers the recommendation resolved. The recommendation can be closed pending OIG’s review and acceptance of documentation showing that S&B has obtained and posted notices of the whistleblower protections specified.

Recommendation 2. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract No. IBM05D0001 ensure that the contractor S&B Infrastructure, Ltd. (S&B), notifies any subcontractor still performing on American Recovery and Reinvestment Act-funded task orders of the substance of the whistleblower protection clause.

IBWC Response and OIG Analysis: IBWC concurred with the recommendation, stating that “as part of the response to Recommendation 1, S&B will be required to list current subcontractors notified of the substance of the whistleblower clause.”

Based on the response, OIG considers the recommendation resolved. The recommendation can be closed pending OIG’s review and acceptance of documentation showing that S&B has notified subcontractors of the substance of the whistleblower protection clause.

² FAR 52.203-15(b).

Finding B. Recovery Act Task Order Reporting Was Inaccurate and Incomplete

The contractor S&B did not submit correct and complete reports onto the Web site FederalReporting.gov as required by the FAR³ for its Recovery Act-funded task orders. The FAR requires the contractor to report specific information, such as basic contract details, an assessment of the contractor's progress toward completion, and "any first tier subcontract funded in whole or in part under the Recovery Act that is over \$25,000." However, S&B did the following:

- It inconsistently reported the contract award date for the prime contract and subcontracts, and it erroneously reported the date of the Notice to Proceed or the date the contract was signed instead of the effective date.
- It incorrectly reported, in both quarters tested, a second-tier subcontractor under Task Order No. IBM09T0018 as a first-tier subcontractor.

S&B personnel stated that the guidance available on Recovery.gov was not clear and that the guidance provided by the IBWC contracting officers and Recovery.gov help desk was inconsistent between reporting periods. Without complete and accurate reporting, relevant contract information is not available to the Government and the public, thereby defeating one goal of the Recovery Act: transparency.

Recommendation 3. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract No. IBM05D0001 ensure that the contractor S&B Infrastructure, Ltd. (S&B), is aware of the reporting requirements of FederalReporting.gov under its Recovery and Reinvestment Act task orders and that S&B establishes controls for preparing and submitting reports that are complete and accurate.

IBWC Response and OIG Analysis: IBWC concurred with the recommendation, stating that "the FederalReporting.gov website provides online training to contractors which we agree may be underutilized by the prime and subcontractors alike." IBWC further stated that it will require S&B to certify that their ARRA reporting specialists have taken the seven Web-based seminars.

Based on the response, OIG considers the recommendation resolved. The recommendation can be closed pending OIG's review and acceptance of documentation showing that S&B is aware of the reporting requirements identified and that S&B establishes the recommended controls for reports.

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

Finding C. Required Subcontractor Certifications Were Not Obtained

The contractor S&B did not obtain all required certifications from its subcontractors. Specifically, S&B did not obtain certification from any of its 13 subcontractors that, at the time of award, “the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government” in accordance with the FAR.⁴ The subcontractors performed surveying, drilling, mapping, and other specialty functions. S&B officials stated that S&B’s policy is to check the Online Representations and Certifications Application system prior to contracting with subcontractors, as that system provides representations and certifications as to whether a subcontractor is debarred or suspended. They further stated that they were not aware that the FAR required the subcontractor to provide a separate certification.

Not obtaining required certifications could result in subcontracts being awarded to companies that have been debarred, suspended, or proposed for debarment. We were able to verify that the subcontractors S&B used 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. S&B officials stated that they had initiated a process of sending emails to all of its subcontractors requesting the required information.

Recommendation 4. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract No. IBM05D0001 ensure that the contractor S&B Infrastructure, Ltd. (S&B), obtains certifications from all of its subcontractors performing on Recovery and Reinvestment Act task orders confirming that they or their principals are not debarred, suspended, or proposed for debarment.

IBWC Response and OIG Analysis: IBWC concurred with the recommendation, stating that it will “require S&B to provide certifications from all of its subcontractors performing on ARRA task orders confirming that they or their principals are not debarred, suspended, or proposed for debarment.”

Based on the response, OIG considers the recommendation resolved. The recommendation can be closed pending OIG’s review and acceptance of documentation showing that S&B obtains the certifications specified from all of its subcontractors.

⁴ FAR 52.209-6(b), “Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.” (Sept. 2006).

List of Recommendations

Recommendation 1. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract No. IBM05D0001 ensure that the contractor S&B Infrastructure, Ltd. (S&B), obtains and posts notices of employees' whistleblower protections under the American Recovery and Reinvestment Act of 2009.

Recommendation 2. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract No. IBM05D0001 ensure that the contractor S&B Infrastructure, Ltd. (S&B), notifies any subcontractor still performing on American Recovery and Reinvestment Act-funded task orders of the substance of the whistleblower protection clause.

Recommendation 3. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract No. IBM05D0001 ensure that the contractor S&B Infrastructure, Ltd. (S&B), is aware of the reporting requirements of FederalReporting.gov under its Recovery and Reinvestment Act task orders and that S&B establishes controls for preparing and submitting reports that are complete and accurate.

Recommendation 4. We recommend that the International Boundary and Water Commission (IBWC) contracting officer for IBWC Contract No. IBM05D0001 ensure that the contractor S&B Infrastructure, Ltd. (S&B), obtains certifications from all of its subcontractors performing on Recovery and Reinvestment Act task orders confirming that they or their principals are not debarred, suspended, or proposed for debarment.

Scope and Methodology

The Department of State (Department), Office of Inspector General (OIG), Office of Audits, engaged Cotton & Company, LLP (referred to as “we” in this appendix), to conduct performance audits of contractors that received American Recovery and Reinvestment Act (Recovery Act) funds from the International Boundary and Water Commission (IBWC). One of the contractors selected for review was S&B Infrastructure, Ltd. (S&B), in McAllen, Texas. The audit included Recovery Act funds for 12 task orders under indefinite delivery, indefinite quantity architecture and engineering Contract No. IBM05D0001. The audit included Recovery Act funds expended through September 30, 2010, with fieldwork conducted from October 2010 through June 2011.

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 our audit objective.

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

- Reviewed documentation available on the Internet for S&B 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 from the Web site FederalReporting.gov to determine whether information reported was accurate and supported.
- Reviewed and evaluated subcontracts executed by S&B to ensure inclusion of proper clauses and receipt of debarment certifications.
- Reviewed task order documentation, IBWC monitoring reports, and construction contract documentation to ensure design work was completed both timely and accurately.

We discussed tentative results of this audit with S&B officials on June 1, 2011.

Review of Internal Controls

We reviewed the contractor S&B’s controls to ensure its own and subcontractor compliance with contractual and regulatory requirements. We determined that S&B did not have appropriate controls established to ensure compliance with contractual and regulatory requirements. S&B did not have controls established to ensure that its subcontractors complied with *Federal Acquisition Regulation* requirements as they pertained to providing contractor and

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subcontractor personnel with notices of their whistleblower protections under the Recovery Act. S&B also did not have appropriate controls established to submit accurate Recovery Act reports. Proper controls were not in place to ensure that deliverables were free of design errors and omissions.

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

Use of Computer-Processed Data

We validated expenditures listed in IBWC's budgetary and billing systems to ensure the accuracy of reporting on FederalReporting.gov. We found no unexplained discrepancies in the expenditure data reported. We did, however, find inaccuracies in the data reported on FederalReporting.gov. However, these errors were caused by the contractor S&B's misunderstanding of reporting requirements and were not caused by automated data system issues.

S&B Recovery and Reinvestment Act-Funded Task Orders

Task Order	Amount	Award Date	Project Description
IBM09T0013	\$612,066	3/3/2009	Geotechnical Analysis and Engineering Evaluation of Rectification Levee from International Dam to Riverside Weir.
IBM09T0018	\$10,883,015	4/2/2009	Design of Rehabilitation Improvements for the Main and North Floodways and Arroyo Colorado Protective Levee Systems located within the Lower Rio Grande Flood Control Project (LRGFCP).
IBM09T0019	\$91,721	4/2/2009	Design of Rehabilitation Improvements of the Hidalgo Protective Levee System, Phase II, revised within the LRGFCP.
IBM09T0020	\$658,661	4/9/2009	Geotechnical Analysis of the LRGFCP Levee System within the Lateral A to Donna Pump to Retamal Dam Levee Reach.
IBM09T0024	\$145,646	4/9/2009	U.S. Section, IBWC Project Development of the Rio Grande Flood Control System Lateral A to Donna Pump to Retamal Dam Levee Reach Aerial Survey.
IBM09T0025	\$33,158	4/17/2009	Design of Rehabilitation Improvements of the Hidalgo Protective Levee System, Phase I, revised within the LRGFCP.
IBM09T0026	\$873,663	4/20/2009	Design of Rehabilitation Improvements for the LRGFCP Lateral A to Donna Pump Levee and Retamal Dike Reach.
IBM09T0027	\$2,306,453	5/1/2009	Upper Rio Grande Aerial Survey.
IBM09T0028	\$176,327	6/22/2009	Bidding Services and Construction Management Services for the Banker Floodway North Levee Rehabilitation Project.
IBM09T0029	\$79,635	6/22/2009	Design of Rehabilitation Improvements for the Easternmost 800 LF of the South Levee of the Banker Floodway.
IBM09T0030	\$7,621,982	6/22/2009	Design of Rehabilitation Improvements for the Rio Grande Canalization Protective Levee System located within the Upper Rio Grande Flood Control Project.
IBM09T0031	\$1,515,509	9/17/2009	Design of Rehabilitation Improvements for Fabens Reach in El Paso County and Fort Hancock Reach in Hudspeth County within the Rectification Flood Control Project.
TOTAL	\$24,997,836		

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Appendix C

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

August 23, 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

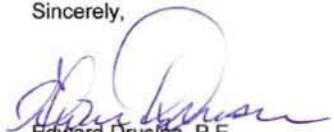
Subject: OIG Audit of International Boundary and Water Commission Construction Contract with S&B.

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 S&B Infrastructure, using Funds provided by the American Recovery and Reinvestment Act Draft Report dated July 2011.

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

Sincerely,



Edward Drusina, P.E.
Commissioner

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

The Commons, Building C, Suite 100 • 4171 N. Mesa Street • El Paso, Texas 79902-1441
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Thank you for the copy of your report dated July 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. IBM05D0001 ensure that the contractor S&B Infrastructure, Ltd., obtains and posts notices of employee's whistleblower protections under ARRA.

Response: S&B Infrastructure will be advised to comply with this requirement and post notices of employee's whistleblower protections under ARRA. A certification from S&B will be required within 15 days of this response.

2. Recommendation 2. We recommend that the USIBWC contracting officer ensure that the contractor S&B Infrastructure, Ltd., notifies any subcontractor still performing on the ARRA funded task orders of the substance of the whistleblower protection clause.

Response: As part of the certification at Response to Recommendation 1 above, S&B will be required to list current subcontractors notified of the substance of the whistleblower clause.

3. Recommendation 3. We recommend that the USIBWC contracting officer for IBWC Contract No. IBM09D0001 ensure that the contractor S&B Infrastructure, Ltd. (S&B), is aware of the reporting requirements of FederalReporting.gov under its Recovery and Reinvestment Act task orders and that S&B establishes controls for preparing and submitting 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 S&B to certify that their ARRA reporting specialists have taken the seven (7) webinars.

4. Recommendation 4: We recommend that the USIBWC contracting officer for IBWC Contract No. IBM05D0001 ensure that the contractor S&B Infrastructure, Ltd., obtains certifications from all of its subcontractors performing on Recovery and Reinvestment Act task orders confirming that they or their principals are not debarred, suspended, or proposed for debarment.

Response: This office will require S&B to provide certifications from all of its subcontractors performing on ARRA task orders confirming that they or their principals are not debarred, suspended, or proposed for debarment.

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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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