

*U.S. DEPARTMENT OF COMMERCE
Office of Inspector General*



*National Oceanic and
Atmospheric Administration*

*Concerns over NOAA's Oversight of
Grants and Contract with
Finger Lakes Production International,
Incorporated*

Final Report No. CAR-19201/July 2009

FOR PUBLIC RELEASE

Office of Audit and Evaluation





Report In Brief

U.S. Department of Commerce Office of Inspector General

July 2009



Why We Did This Review

In October 2006, Finger Lakes sought payment from NOAA in the amount of \$526,000 for 456 of 968 radio spots produced over a 4-year period. The firm also submitted a complaint to Congress, in which it alleged NOAA had broken funding promises, used an onerous process for approving radio spots in the absence of a formal funding agreement, and conducted inappropriate oversight of a subaward the company had received from the National Marine Sanctuary Foundation.

We audited NOAA's oversight of grants and contract with Finger Lakes to determine whether internal control weaknesses were evident throughout NOAA's business dealings with Finger Lakes.

Background

In August 2002, Finger Lakes Production International, Incorporated, entered into a sole-source contract with NOAA's Office of Ocean Exploration to produce 86 radio spots at a cost of \$100,000 over a 6-month period ending in January 2003. After the contract expired, Finger Lakes applied for and received a financial assistance award that eventually resulted in a series of grants totaling \$490,000 in funding to continue producing NOAA-sponsored radio spots over a 2-year period.

National Oceanic and Atmospheric Administration

Concerns over NOAA's Oversight of Grants and Contract with Finger Lakes Production International, Incorporated (Final Report No. CAR-19201)

What We Found

We found that weaknesses in internal controls were evident throughout NOAA's business dealings with Finger Lakes. NOAA's relationship with this company was flawed almost from the start, as program officials ignored federal protocol for working with private sector firms. NOAA program officials' casual discussions of funding possibilities, letters of endorsement, and use of various funding vehicles likely conveyed a strong interest in maintaining a long-term working relationship with Finger Lakes, and minimized, perhaps inadvertently, the differing requirements and inherent obligations associated with grants, contracts, and other government-funding vehicles.

Specific examples of NOAA's actions include the following:

- **Inappropriate Notification of a Grant Award.** Then-director of NOAA's Office of Exploration inappropriately notified Finger Lakes of a grant award in advance of the grants officer's official notification.
- **Inadequate Grants Management.** Both the grants management office and the program office failed to convey to Finger Lakes key information about requirements for tracking and reporting incurred costs.
- **Potential Unauthorized Commitment.** The director of NOAA's Office of Education inappropriately discussed funding strategies with Finger Lakes and the Smithsonian Institution regarding the production of jointly sponsored radio spots, in which the Office of Education and Smithsonian Institution would pay Finger Lakes \$50,000 for the series of spots.

What We Recommended

We recommended that the deputy under secretary for Oceans and Atmospheres ensure that NOAA takes the following actions:

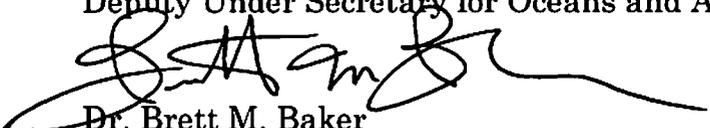
- Strengthen grants and procurement internal controls to include stronger oversight of program officials' interactions with current and prospective grant and contract recipients, and provide additional guidelines and training for these officials to ensure they understand their appropriate roles.
- Revisit the circumstances surrounding the review and approval of the scripts Finger Lakes produced under joint Smithsonian/NOAA sponsorship and determine whether NOAA's actions resulted in a \$50,000 unauthorized commitment.

JUL 02 2009



UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

MEMORANDUM FOR: Mary Glackin
Deputy Under Secretary for Oceans and Atmosphere

FROM: 
Dr. Brett M. Baker
Assistant Inspector General for Audit

SUBJECT: *Concerns over NOAA's Oversight of Grants and Contract with Finger Lakes Production International, Incorporated (Final Report No. CAR-19201)*

We are providing this final report on our inspection of NOAA's Oversight of Grants and Contract with Finger Lakes Production International, Incorporated (Finger Lakes). Our review found that internal control weaknesses were evident throughout NOAA's business dealings with Finger Lakes, as NOAA established a flawed relationship when program officials ignored federal protocols for working with private sector firms (see page 2).

We recommended that NOAA strengthen grants and procurement internal controls to include stronger oversight of program officials' interactions with current and prospective grant and contract recipients, and provide additional guidelines and training for these officials to ensure they understand their appropriate roles. In addition, we recommended that the bureau revisit the circumstances surrounding the review and approval of the scripts Finger Lakes produced under joint Smithsonian/NOAA sponsorship and determine whether NOAA's actions resulted in a \$50,000 unauthorized commitment (see page 7).

In its June 29, 2009, response to our draft report, NOAA concurred with our recommendations and provided details of the corrective actions that it had taken and planned. The action taken for the first recommendation is responsive. In addition, the action that NOAA intends to take on the second recommendation will be responsive when completed. NOAA's response is summarized in the report and included in its entirety in appendix II.

BACKGROUND

This report discusses NOAA's funding arrangements with Finger Lakes Production International, Incorporated, of Ithaca, New York, for the production of public service broadcasts on ocean exploration. Specifically, we conducted an inspection of the 2002 contract and financial assistance awards made in 2003, 2005, and 2006 in relation to a claim by Finger Lakes that NOAA owed the firm \$526,000 (see table 1, page 2).

Briefly, the circumstances surrounding the claim are as follows: in October 2006, Finger Lakes sought payment from NOAA in the amount of \$526,000 for 456 of 968 radio spots produced over a 4-year period. The company did not apply for the 2005 award and was unsuccessful in its attempt to receive an award in 2006. The firm also submitted a complaint to Congress, in which it alleged NOAA had broken funding promises, used an onerous process for approving radio spots in the absence of a formal funding agreement, and conducted inappropriate oversight of a subaward the company had received from the National Marine Sanctuary Foundation.

In response to a congressional request, Admiral Conrad Lautenbacher, then-under secretary for Oceans and Atmosphere reviewed the claim and found it had no basis. Beyond this determination, however, our review identified internal control weaknesses in NOAA's oversight of grant and procurement policies and procedures that likely fueled the claim, and therefore, require strengthening. NOAA also could not provide adequate documentation to resolve a portion of Finger Lakes' claim—a purported \$50,000 committed as part of a joint sponsorship arrangement with the Smithsonian Institution that may constitute an unauthorized commitment (see figure 1, page 4). We recommend that NOAA reexamine the circumstances, surrounding this amount.

FINDINGS AND RECOMMENDATIONS

Our overarching finding was that internal control weaknesses were evident throughout NOAA's business dealings with Finger Lakes. NOAA's relationship with this company was flawed almost from the start, as program officials ignored federal protocols for working with private sector firms. NOAA's program officials' casual discussions of funding

possibilities, letters of endorsement, and use of various funding vehicles likely conveyed a strong interest in maintaining a long-term working relationship with

March 2002	NOAA Office of Communications enters into memorandum of understanding for sponsorship of no-charge radio scripts
August 2002	NOAA Office of Ocean Exploration enters into 6-month, \$100,000 contract for 86 radio scripts
May 2003	Finger Lakes receives a series of grants that eventually amounted to \$490,000 to produce scripts over a 2-year period
January 2006	Finger Lakes commits verbally and through e-mails to producing scripts as part of a joint-sponsorship arrangement with the Office of Education and Smithsonian for a fee of \$50,000 from each sponsor
May 2006	In a complaint to its representative in Congress, Finger Lakes accuses NOAA of failing to pay \$526,000 for broadcasts
October 2006	Finger Lakes sends a letter to NOAA's grants management office seeking payment of \$526,000
February 2007	Finger Lakes' congressional representative asks the under secretary for Oceans and Atmosphere to investigate the company's claim
July 2007	Under secretary finds no liability on NOAA's part

Finger Lakes, and minimized, perhaps inadvertently, the differing requirements and inherent obligations associated with grants, contracts, and other government-funding vehicles. We identified several specific actions on the part of both NOAA and Finger Lakes that likely contributed to the claim.

Memorandum of Understanding (MOU) and Subsequent Funding Arrangements

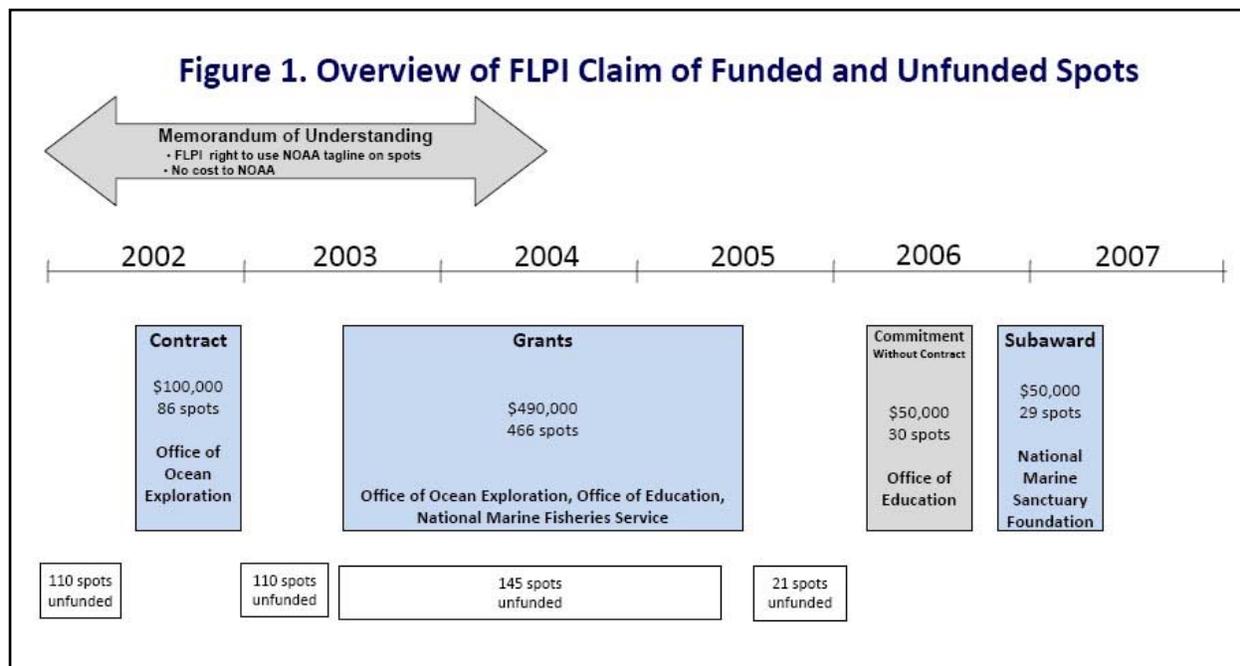
MOU. The president of Finger Lakes approached NOAA's director of Public, Constituent, and Intergovernmental Affairs within the Office of Communications¹ in early 2002 to solicit sponsorship for the radio spots. In March 2002, the Office of Communications entered into an MOU with Finger Lakes that allowed the company to identify NOAA as the spots' sponsoring agency subject to NOAA's review and approval of the spots. NOAA had no financial obligation to Finger Lakes under the MOU. NOAA did not pay for the sponsorship or the right of review.

Contract Award. In August 2002, while the MOU was in place, the company entered into a sole-source contract with the Office of Ocean Exploration to produce 86 spots at a cost of \$100,000, or \$1,163 per script, over a 6-month period ending in January 2003. The Federal Acquisition Regulation states that contracts establish mutually binding legal relationships obligating a seller to furnish the supplies or services and a buyer to pay for them. Thus, NOAA had established a legal commitment and the company apparently believed, going forward, that a price for each script had been set.

Grant Award. After the contract expired in January 2003, Finger Lakes applied for and received a financial assistance award that eventually resulted in a grant totaling \$490,000 in funding (\$300,000— Office of Ocean Exploration, \$100,000— Office of Education, and \$90,000—Marine Fisheries Service) to continue producing NOAA-sponsored radio spots from May 2003 through September 2005. Unlike the contract arrangement with Finger Lakes, grants require recipients to track and report their incurred project-related costs. This award to the company was noteworthy because 6 of 92 submitted proposals were selected for grant funding, including Finger Lakes and only one other recipient that was rated fair to poor by independent reviewers. The then-director of the Office of Ocean Exploration anticipated the availability of grant funds under a Federal Register notice concerning the pending issuance of financial assistance awards. He suggested that Finger Lakes apply for an award. NOAA subsequently selected Finger Lakes for the grant under this Federal Register notice, even though independent evaluators did not rate the company's grant proposal at the highest level. The Federal Register

¹ This office was at the time known as the Office of Public and Constituent Affairs.

notice provided the director with the authority to select Finger Lakes despite the company's low rating.



Inappropriate Notification of the Grant Award and Discussion of Possible Funding. While the director was within his authority to select Finger Lakes, he overstepped his authority in notifying the firm of the award in advance of the grants office's official notification. The Department of Commerce's *Grants Manual* states that only grants officers can notify recipients of their selection for an award. That officer notified Finger Lakes of the award on June 23, 2003. But in a tape-recorded April 21st conversation between the Finger Lakes president and the director, the two discussed the award. We listened to the taped discussion and confirmed that the director had made the improper notification. The director subsequently stated that while he was unaware he was being recorded, he liked Finger Lakes' product and wanted to tell the company of the award as soon as possible.

Also in this and a subsequent recording, the director made multiple mentions of additional sources of new grants that NOAA would make available for the radio spots. According to the *Grants Manual*, these discussions were inappropriate: as program representative, the director's funding-related involvement is limited to preparing notices of funding availability or other grant-related documents for publication in the Federal Register. The advanced notification and direct discussions about future funding could have led the company to believe that NOAA intended to continue the partnership and fund the broadcasts at a level that

exceeded the identified resources available for this purpose. In fact, the former grants officer who administered the award acknowledged that senior program officials had routinely discussed funding with Finger Lakes. He further stated that officials promised funds and pledged to seek additional funding while encouraging the company to continue producing NOAA-sponsored spots, but the additional funding did not always materialize.

Inadequate Grants Management. Both the grants management office and the program office failed to convey to Finger Lakes key information about requirements for tracking and reporting incurred costs. NOAA's grant award terms and conditions require recipients to document all project-related expenditures and submit periodic financial status reports, but Finger Lakes did not do so. The firm's business officer stated that Finger Lakes had not closely monitored incurred costs because the grants officer never informed the company of the need to track and report them. Under the simplified contract, which NOAA first awarded Finger Lakes, the company was not required to provide this detailed financial reporting. The business officer also told us that the company viewed the grant as the same type of financial arrangement as the contract—with each produced radio script representing an amount due from NOAA. We showed the business officer where in the grant agreement the requirement to track and report costs is referenced. The business officer could provide an estimate of incurred costs but was unable to fully substantiate these costs.

Termination of the MOU. The MOU had stated that either party could terminate the agreement at anytime. Accordingly, in June 2004, on the advice of the NOAA grants officer, the company terminated the MOU. The Finger Lakes president stated that the grants officer had recommended that the MOU be terminated because the contract and grant awards superseded it.

NOAA's Review and Approval of Spots in the Absence of a Formal Agreement and a Potential Unauthorized Commitment of Funds

The grant ended in September 2005, but from October 2005 to May 2006, Finger Lakes produced 69 additional spots, submitted them to NOAA for review, and aired them with a statement attributing sponsorship to NOAA, even though no formal agreement existed between the two. It appears that during this period, no one at NOAA questioned why it was reviewing radio spots and allowing the use of its name as sponsor in the absence of a legal relationship with Finger Lakes. Also during this period, NOAA provided the company with letters of support for its programming. One such letter from the public affairs office stated in part, "On behalf of NOAA, I offer any support needed for Finger Lakes Productions International to continue to create the outstanding series *Our Ocean World*." Combined with the bureau's continued approval of the spots written during this period, the letters also likely

contributed to the company's misunderstanding of NOAA's intent to continue funding the radio program.

Potential Unauthorized Commitment. Finally, we confirmed that another NOAA program official openly discussed funding strategies for *Our Ocean World* with the company's president. In this instance, the director of NOAA's Office of Education entered into discussions with Finger Lakes and the Smithsonian Institution in January 2006 regarding the production of jointly sponsored radio spots. According to e-mails among the three parties, the Office of Education and the Smithsonian discussed paying Finger Lakes \$50,000 for the series of spots.

The e-mail trail suggests the company believed the discussions resulted in a final agreement of \$100,000 for the broadcasts. After the initial meeting between the three, the company president forwarded a follow-up e-mail to the director of the Office of Education on January 18, 2006, presenting a \$50,000 proposal and co-sponsorship language to be used in the spots. In an e-mail reply, the director stated that since the spots would be co-sponsored, the Finger Lakes' proposal should be for \$100,000. She also suggested revisions to the sponsorship language. In late January through April 2006, Finger Lakes forwarded 30 of the proposed 69 spots containing the co-sponsorship text to NOAA's office of communications for review and approval, per NOAA policy. The director stated that she was unaware of the spots' approval and subsequent broadcasts until after the fact. The director acknowledged she discussed the funds but stated that she neither intended to commit NOAA to funding spots nor believed she had done so. She also stated that she had always verbally informed Finger Lakes that any broadcasts would be subject to availability of funds.

Conversely, the Smithsonian acknowledged that an agreement had been reached. In May 2006, the agency issued a purchase order to ratify an unauthorized commitment of funds and pay \$50,000 to Finger Lakes for its share of the radio spots. The NOAA director's e-mail correspondence and the Smithsonian ratification raise the question of whether the director's actions resulted in a \$50,000 unauthorized commitment.

Subaward. In May 2006, the NOAA director of the Office of Education asked the National Marine Sanctuary Foundation to budget \$50,000 for a grant subaward to Finger Lakes. The statement of work cited radio programming jointly sponsored by the Smithsonian and NOAA's Office of Education. However, the foundation did not accept the broadcasts produced between January and April as fulfilling the subaward requirement and in the award letter to Finger Lakes, it stipulated that the company was to produce 29 new spots, which Finger Lakes did.

Recommendations

We recommend that the deputy under secretary for Oceans and Atmosphere ensure that NOAA takes the following actions:

- Strengthen grants and procurement internal controls to include stronger oversight of program officials' interactions with current and prospective grant and contract recipients, and provide additional guidelines and training for these officials to ensure they understand their appropriate roles.
- Revisit the circumstances surrounding the review and approval of the scripts Finger Lakes produced under joint Smithsonian/NOAA sponsorship and determine whether NOAA's actions resulted in a \$50,000 unauthorized commitment.

NOAA's Response

On June 29, 2009, we received NOAA's response to our May 8, 2009, draft report. In its response, NOAA provided some general and specific comments on the findings, concurred with our recommendations, and indicated that it had already taken or planned to take action to address the recommendations.

In its general comments, NOAA stated that the draft report was particularly helpful in showing how the relationship with Finger Lakes developed. NOAA further provided eight specific comments for consideration when preparing this final report.

In responding to our first recommendation, NOAA concurred stating that it will continue to review and update requirements in the Department's *Grants Manual*. NOAA further stated that the Grants Management Division will continue to inform management, including senior-level individuals, of its responsibilities when holding discussions with potential applicants or vendors. NOAA provided one example of a January 2009 e-mail that provided guidance to all program officials. Lastly, NOAA stated that it would encourage the Department's Ethics Division, Office of the Assistant General Counsel for Administration, to include a section for senior executives concerning the appropriate interaction when discussing contract and grants.

In response to our second recommendation, NOAA concurred stating that it would immediately assign a senior official external to the acquisition and grants office to review the actions.

OIG's Comments

We considered NOAA's comments when preparing our final report. Appendix II provides OIG's responses to NOAA's comments on the report.

The action taken for the first recommendation is responsive and the action for the second recommendation will be responsive when completed.

Concerning the first recommendation, we are encouraged by NOAA's actions to review and update the Department's *Grants Manual*, as this is an effective method for ensuring that all NOAA representatives follow required procedures. In addition, reinforcement by the Grants Management Division will ensure that the staff and senior individuals are reminded of those policies. Finally, we agree that the Department's Ethics Division should include a training section annually on appropriate interaction with prospective grant recipients and vendors. However, we ask that NOAA provide an action plan containing the planned or completed date of the intended request.

Concerning the second recommendation, NOAA's plan to assign a senior official to review the actions and determine if an unauthorized commitment occurred, NOAA will be responsive to our recommendation when completed. However, NOAA should ensure that the senior official is familiar with federal contracting matters, including ratification procedures in case of a suspected unauthorized commitment by a government official in accordance with Federal Acquisition Regulation Subpart 1.602-3.

In accordance with Department Administrative Order 213-5, please provide to us, within 60 days of the date of this memorandum, an action plan that addresses when the recommendations will be completed. If you would like to discuss the contents of the final report, please contact me at (202) 482-2600. We appreciate the cooperation and the courtesies your staff extended to us during our review.

cc:

Helen Hurcombe, director, Department of Commerce Acquisition Management
Michelle McClelland, chief, Federal Assistance Law Division, Department of
Commerce Office of General Counsel
Jeffrey Joyner, counsel, Department of Commerce Federal Assistance Law
Division
Mitchell Ross, director, NOAA Acquisition and Grants Office
Rimas Liogys, director, NOAA Grants Management Division
Mack Cato, NOAA Audit Liaison

Attachments

Appendix I: Objective, Scope, and Methodology

The objective of this inspection was to evaluate NOAA's contract and financial assistance awards to Finger Lakes Production International, Incorporated.

We performed our fieldwork from April 2008 through February 2009 at NOAA's headquarters and the National Marine Sanctuary Foundation in Silver Spring, Maryland, and Finger Lakes Production International, Inc., in Ithaca, New York.

We met with NOAA's procurement and program officials and reviewed the following:

- contract files, policies, and documentation related to issuing and administering the Finger Lakes contract
- documentation concerning the subgrant to Finger Lakes
- approved radio scripts and an original version of the taped discussions between NOAA's officials and the president of Finger Lakes

We conducted this review in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency, dated January 2005, and under the authority of the Inspector General Act of 1978, as amended, and Department Organizational Order 10-13, dated August 31, 2006.

Appendix II: NOAA'S Comments and OIG'S Responses

The following are NOAA's specific comments on the report and OIG's responses.

MOU

NOAA's Comment. The MOU between NOAA and Finger Lakes was cleared by the Department's General Counsel for Administration. The MOU authorized review and approval of the contents of radio spots and established a review and approval process. The review process was agreed to by Finger Lakes.

OIG's Response. We agree with NOAA's comments and reached the same conclusion during the review. We did not revise the report.

Grant Award

NOAA's Comment. The financial assistance award was amended several times, adding additional funds totaling \$490,000 (\$300,000—Office of Ocean Exploration, \$100,000—Office of Education, and \$90,000—National Marine Fisheries Service) to continue producing NOAA-sponsored radio spots from May 2003 through September 2005. Furthermore, the selection official may recommend financial assistance to organizations with proposals that were not highly rated. The encouragement of the selection official to Finger Lakes to apply for financial assistance through the competitive announcement in the Federal Register announcement is appropriate.

OIG's Response. We acknowledge these comments. The report already provides the total amount of funding provided under the grant and we did not revise the report. However, we did revise the report on page 3 to state that the Federal Register provided the director, who is the selecting official, with the authority to select Finger Lakes despite its low rating.

Inappropriate Notification of the Grant Award and Discussion of Possible Funding

NOAA's Comment. NOAA policy is to provide award notification through a grants officer, and notice was provided to Finger Lakes. The discovery documents submitted by Finger Lakes Production International (FLPI) from various interactions with NOAA reflect discussions of performance by the former director of the Office of Ocean Exploration. No authorization to exceed the award was made by the former director of the Office of Ocean Exploration or a grants officer.

OIG's Response. We agree with NOAA policy, which is consistent with the Department's *Grants Manual*. However, we do not agree that the discovery documents reflect a discussion of performance by the former director of the Office of Ocean Exploration. Specifically, the document that we verified was a transcript of a

discussion between the former director and Finger Lakes where he notified the company of the intent to award a grant for the *Our Ocean World* radio spots. We did not revise the report for any of these comments.

Inadequate Grants Management

NOAA's Comment. The financial assistance provided to Finger Lakes was based on a competitive Federal Register Notice. The company made use of the advance payment and reimbursement terms of the award. NOAA regularly held workshops on financial assistance compliance, but FLPI never attended.

OIG's Response. We acknowledge NOAA's comments and reviewed where workshops had been held. However, we remain of the opinion that the grants management office and the program office did not convey or enforce Finger Lakes to track and report incurred costs. We did not revise the report.

NOAA's Review and Approval of Spots in the Absence of a Formal Agreement and a Potential Unauthorized Commitment of Funds

NOAA's Comment. NOAA terminated the award as of September 30, 2005. This termination informed the recipient and program office that the relationship between NOAA and FLPI had been terminated. The designated program officers listed in the award documents did not review or approve any spots.

OIG's Response. We acknowledge NOAA's comments and agree that the designated program officers did not review and approve scripts. We believe that the same officials were responsible for ensuring that all offices within NOAA were timely notified that the relationship with Finger Lakes had ended and that no additional radio scripts should be reviewed and approved without another MOU, which formerly was in place. We did not revise the report.

Potential Unauthorized Commitment

NOAA's Comment. While there are multiple references to requests by FLPI for financial assistance, there is no record of any unauthorized commitment made by NOAA personnel.

OIG's Response. Because of the circumstances surrounding the emails and ratification actions by the Smithsonian Institute, we believe that NOAA may also have made an unauthorized commitment that requires ratification as described in the Federal Acquisition Regulation. We did not revise the report.

Subaward

NOAA's Comment. There is no record of any NOAA authorization in the agreements made by or on behalf of the National Marine Sanctuary Foundation with subcontractors or subawardees.

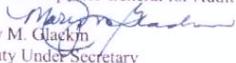
OIG's Response. The foundation reviewed and approved a proposal from Finger Lakes that contained the requirement for the production of the same joint NOAA and Smithsonian radio scripts originally discussed. Also, the NOAA Director of Education had been in contact with the foundation. We did not revise the report.



UNITED STATES DEPARTMENT OF COMMERCE
Office of the Deputy Under Secretary
for Oceans and Atmosphere
Washington, D.C. 20230

JUN 29 2009

MEMORANDUM FOR: Dr. Brett M. Baker
Assistant Inspector General for Audit

FROM: 
Mary M. Glackin
Deputy Under Secretary
For Oceans and Atmosphere

SUBJECT: Draft OIG Report – *Concerns over NOAA's Oversight of Grants
and Contract with Finger Lakes Production International,
Incorporated (CAR-19201)*

Attached is the National Oceanic and Atmospheric Administration's (NOAA) response to the Office of Inspector General's draft report on its review of NOAA's funding arrangements with Finger Lakes Production International, Incorporated, of Ithaca, New York.

We appreciate the opportunity to respond to the draft report.

Attachment



Department of Commerce
National Oceanic and Atmospheric Administration
Comments on the Draft OIG Report Entitled
“Concerns over NOAA’s Oversight of Grants and Contract with Finger Lakes Production
International, Incorporated”
(CAR-19201/May 2009)

General Comments

The National Oceanic and Atmospheric Administration (NOAA), a bureau of the U.S. Department of Commerce appreciates the considerable time and effort expended by the Office of Inspector General (OIG) in conducting a review of the NOAA contract and financial assistance awards to Finger Lakes Production International, Incorporated (FLPI). The report is particularly helpful in illuminating the relationship that developed with FLPI over several years through multiple separate interactions. We do have some comments that may be useful in preparing the final report.

Specific Comments

Page 3, second paragraph: Memorandum of Understanding (MOU). The MOU between NOAA and Finger Lakes Production International (FLPI), Incorporated, dated March 6, 2002, was cleared by the Department of Commerce (DOC) General Counsel for Administration. The clearance was based on internal controls established by the Department of Commerce and adhered to by NOAA. The MOU authorized review and approval of the contents of radio spots and established a review and approval process, set forth in paragraph 6 of page 1 of the MOU. The review process was agreed to by Paul Bartishevich, President of FLPI.

Page 4, first paragraph: Grant Award. After the contract expired in January 2003, the then-director of the Office of Ocean Exploration anticipated the availability of competitive grant funds under a Federal Register notice and suggested that Finger Lakes apply for financial assistance. Finger Lakes applied for and received financial assistance in the amount of \$100,000. The financial assistance award was amended several times, adding additional funds totaling \$490,000 (\$300,000—Office of Ocean Exploration, \$100,000—Office of Education, and \$90,000—National Marine Fisheries Service) to continue producing NOAA-sponsored radio spots from May 2003 through September 2005.

Page 4, first paragraph, lines 12-15: Grant Award. The competitive announcement published in Federal Register Volume 67, Number 221, dated November 15, 2002, provides the selection official discretion in the award of financial assistance. The selection official may recommend financial assistance to organizations with proposals that were not highly rated. An award was recommended for FLPI, with poor to fair ratings, based on broader uses to NOAA. The encouragement of the selection official to FLPI to apply for financial assistance through the competitive announcement in the Federal Register announcement is appropriate.

Page 4, second paragraph: **Inappropriate Notification of the Grant Award and Discussion of Possible Funding.** NOAA policy is to provide award notification through a Grants Officer. Such notice was provided to FLPI. The legislative branch is provided advance notice of pending awards through the bureau and department offices of legislative affairs. That advance notice was provided in this case. The discovery documents submitted by FLPI from various interactions with NOAA reflect discussions of performance by the former Director of the Office of Ocean Exploration. No authorization to exceed the award was made by the former Director of the Office of Ocean Exploration or a Grants Officer.

Page 5, second paragraph: **Inadequate Grants Management.** The financial assistance provided to FLPI was based on a competitive Federal Register Notice, registration, application, and bi-lateral agreement to the award. FLPI made use of the advance payment and reimbursement terms of the financial assistance award. All terms and conditions applicable to the award were set forth in the award. NOAA regularly held workshops on financial assistance compliance for awardees and provided written notice of the workshops. To our knowledge, FLPI did not attend any workshops.

Page 6, first paragraph: **NOAA's Review and Approval of Spots in the Absence of a Formal Agreement and a Potential Unauthorized Commitment of Funds.** NOAA terminated the award as of September 30, 2005. This termination informed the recipient and program office that the relationship between NOAA and FLPI had been terminated. The designated Program Officers listed in the award documents did not review or approve any spots.

Page 6, second paragraph: **Potential Unauthorized Commitment.** While there are multiple references to requests by FLPI for financial assistance, there is no record of any unauthorized commitment made by NOAA personnel.

Page 7, first paragraph: **Sub-award.** There is no record of any NOAA authorization in the agreements made by or on behalf of the National Marine Sanctuary Foundation with subcontractors or sub-awardees.

Response to OIG Recommendations

The draft OIG report states, "We recommend that the Deputy Under Secretary for Oceans and Atmosphere ensure that NOAA takes the following actions:"

Recommendation 1: "Strengthen grants and procurement internal controls, to include stronger oversight of program officials' interactions with current and prospective grant and contract recipients, and additional guidelines and training for these officials to ensure they understand their appropriate role."

NOAA Response: We concur. NOAA will continue to review and update the requirements outlined in the DOC Grants and Cooperative Agreements Policy manual. On behalf of NOAA, GMD will continue to inform management of their grants responsibilities including senior level individuals when they have discussions with potential applicants or vendors. For example, we

disseminated guidance in January 2009 through our Grants Management Advisory Committee to all program officials (see attached documentation).

We will encourage the DOC Ethics Division, Office of the Assistant General Counsel for Administration, to include a section in its yearly ethics training for all Senior Executives concerning appropriate interaction with the general public when discussing grants and contracts.

Recommendation 2: “Revisit the circumstances surrounding the review and approval of the scripts Finger Lakes produced under joint Smithsonian/NOAA sponsorship and determine whether NOAA’s actions resulted in a \$50,000 unauthorized commitment.”

NOAA Response: We concur. The NOAA Deputy Undersecretary will immediately assign a senior official external to the Acquisition and Grants Office to conduct a review of these actions.

Attachment (documentation for Rec. 1- OIG Draft Report CAR-19201)

From: Rimas T. Liogys
To: Steve J. Drescher; Samuel Contorno; Jane Piercy; Arlene S. Porter; MMcclelland; ESharp; JoAnna.Grable; DFlynn@DOC.GOV; Sharon Schroeder; Diane Brown; John Cortinas; James LeDuc; sarah.schoedinger; Ingrid Guch; Carne.McDougal; "Chris Suzich (E-mail)"; Patty Mayo;
Subject: DOC GRANTS POLICY - EXTERNAL COMMUNICATIONS FOR NOAA PERSONNEL INVOLVED IN THE GRANT PROCESS
Date: Monday, January 26, 2009 4:21:47 PM
Attachments: Message.Text.txt
DOC Selection Proc.Chpt 8 6-21-07.pdf
Rimas.T.Liogys.vcf

Dear NOAA GMAC Representatives:

As a reminder, when communicating with recipients, external clients, or preparing for a conference it is important that we minimize any discussions regarding funding or budgetary issues. You are encouraged to contact and utilize the Grants Management Division (GMD) staff in your negotiations with applicants during the pre-award review process, however neither party is at liberty to authorize funding prior to award and only a Grants Officer can commit the Federal Government by issuing a signed grant award. The DOC Grants and Cooperative Agreements Policy manual, under chapter 8, section J. Notice to Applicants, item 1. Successful Applicants, states the following: The Grants Officer will notify successful applicants in writing when they have been selected for an award. Prior to official Grants Officer notification, other officials and employees for the operating unit are prohibited from either formally or informally notifying applicants verbally or in writing that they have been selected for awards.

Also, if attending a conference or presenting a powerpoint presentation that involves grants policy or budget information about your grant program, please submit your draft powerpoint to GMD approximately 30 days prior to the conference in order for the NOAA Grants Office to review and comment on the slides.

Listed below is a link to the DOC Grants Manual:

http://oamweb.osec.doc.gov/gmd_updated-doc.html

Also, attached you will find Chapter 8 of the DOC Updated Grants Manual.

Please ensure that this email is disseminated to all Federal Program Officers and others involved in the grant process.

If you have any questions, please contact your Line Office GMAC Representative.

Thank you,

Rimas T. Liogys
Director, NOAA Grants Management Division