The background of the slide is a stylized, semi-transparent American flag. The stars are visible in the upper left corner, and the stripes flow across the rest of the image. The colors are muted, with a soft red, white, and blue palette.

# **American Recovery and Reinvestment Act Fraud Prevention**

*...Americans Protecting  
America's Future*

Presented on behalf of  
The Federal Office of Inspectors General



# Agenda

- American Recovery and Reinvestment Act (ARRA)
- Office of Inspectors General (OIG) authority and mission
- Project Monitoring
- Overview of fraud/Fraud Indicators
- Whistle Blower Protection
- How to report suspected fraud



# American Recovery and Reinvestment Act

The purposes of the American Recovery and Reinvestment Act are to:

- preserve and create jobs and promote economic recovery.
- assist those most impacted by the recession.
- provide investments needed to increase economic efficiency by spurring technological advances in science and health.
- invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.
- stabilize state and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.



# Impact of ARRA

- Unprecedented
- Increased Accountability
- Heightened Transparency
- New Reporting Requirements
- Expedited Everything!!!



# Federal Inspectors General Authority

- Derived from the Inspector General Act of 1978, as amended
- Conduct and supervise audits and investigations relating to programs and operations of the Department
- Prevent and detect fraud, waste and mismanagement in programs and operations
- Access to **ALL** records, reports, audits, reviews, documents, papers, recommendations, or other material relating to programs and operations



# Mission of Inspectors General

Our work is conducted in accordance with applicable Federal laws, rules, regulations, policies, and procedures.

We educate Federal officials and state, local, and tribal leaders receiving ARRA funds how to detect and report fraud, waste, and abuse.

We maintain a Hotline for the public to report fraud, waste, and abuse.



# Mission of Inspectors General

We examine Federal programs and operations and make recommendations to improve economy and efficiency

We analyze and advise on government-wide initiatives, including information security, grants management, and financial management

We perform investigations involving predominantly “white collar” crimes and employee misconduct



# Familiarity with Federal Programs

OIG expertise and resources to investigate Federal programs.

Access to personnel and records of Federal, state, local, tribal and non-profit agencies, contractors and sub-contractors, grantees and sub-grantees that administer Federal programs.

OIG Criminal Investigators have the authority to:

- Administer and Take Oaths

- Serve Subpoenas

- Make Arrests

- Execute Search and Seizure Warrants



# Inspectors General

- Council on Inspectors General on Integrity and Efficiency consist of 67 members at the federal level
- 28 Offices of Inspectors General with agencies receiving ARRA funds
- 11,600 employees of multiple disciplines
- \$1.9 billion annually in expenditures



# Results of Inspectors General

- \$16.5 billion in potential savings from audit recommendations and investigative recoveries
- Over 300,000 hotline complaints processed
- Over 17,000 indictments, prosecutions, and civil actions
- 4,296 suspensions or debarments
- 5,807 personnel actions



# OIG Role Under ARRA

Inspectors General role under the Act includes education, training, outreach, audit, evaluation, and investigative activities.

## **Sec. 1515. of the Act allows the OIG:**

*(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and*

*(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.*

# Why are you here?

Because project monitoring can prevent and detect fraud, waste and abuse.

Monitoring is a team effort.

- Management
- Project Officers
- Engineers and Inspectors
- Compliance Officers
- Auditors and Investigators





# Project Monitoring

## Management involvement:

- Monitoring begins when the grant, contract or loan is awarded.
- Coordinating and overseeing all aspects of the project:
  - Selecting the right people for the right jobs.
  - Overseeing the procurement process.
  - Developing relationships with the community, contractors, and government officials.
- Due diligence--know something about your contractors (engineers, construction contractors, consultants, and others) that are involved in your project:
  - Financial background
  - Past performance
  - Experience and expertise:



# Project Monitoring

## Financial monitoring:

- Involves reviewing billings and invoices
- Things to look for:
  - **Labor rates**--are you paying for a senior engineer, but getting the services of someone who is less qualified?
  - **Labor costs**--are the number of labor hours reasonable for the number of people working on the project?
  - **Materials**--are you paying too much or paying for materials that don't meet contract specifications?
  - **Equipment**--were you billed for unused or unnecessary equipment?
  - **Documentation**--are costs documented and reasonable? Are documents missing or altered?



# Project Monitoring

## Technical monitoring:

- Involves inspecting and reviewing project progression
- Things to look for:
  - **Oversight**--Is the work performed in accordance with the terms and conditions of the contract? Is construction in accordance with plans and specifications? Are change orders appropriate? Do materials meet project specifications? Buy American provisions, as required by the ARRA?
  - **Billings**--are billings in line with project completion and milestones? Do contractors and subcontractors comply with the Davis Bacon Act?
  - **Coordination**--are technical staffs working with financial staff to ensure contractors are paid appropriately?



# What is Fraud?

Simply put, fraud is:

Lying, cheating, and stealing in the performance of a government grant, contract, or loan.

There is a fine line between *Fraud* and a *Mistake*...

**Intent!**



# Elements of Fraud

- A Representation
- About a Material Point
- Which is False and Intentional
- Which is Acted Upon
- To the Victim's Damage



# What is a Representation?

A ***Representation*** is a claim for reimbursement of project costs incurred. It is supported by billings and invoices from the prime contractor and subcontractors, engineering firms, consultants, and other parties involved in the project.



# What is a Material Point?

- A ***Material Point*** is a specific issue to which evidence is presented in determining guilt regarding an alleged wrongdoing.
- A claim is ***Material*** because of a contractual relationship and the ability to make claims for reimbursement for costs incurred.



# What does False and Intentional Mean?

- A claim may be ***False*** if it does not represent actual incurred costs.
- It is ***Intentional*** if costs are knowingly claimed which are not actually incurred.

Remember...the line between a mistake and fraud is

**intent!**



# How is it Acted Upon?

- A False Claim is ***Acted Upon*** when a claim is submitted for payment.
- The claim is relied upon to be true and accurate, and payment is made based on the representation.



# Who are the Victims of Fraud?

- As taxpayers, we are all victims of fraud
- Here's why:
  - When fraud occurs, the government pays for something it did not receive.
  - The contractor receives more money than it was entitled.



# Effects of Fraud

- About 7%-10% of Federally funded programs is lost to fraud.
- That means about **\$55 billion** of ARRA funds in are at risk of fraud.



# Fraud in Federal Programs

The most common frauds involve grants, loans, and contracts. Here are some examples:

False Statements and Claims

Cost mischarging

Conflicts of Interest

Product Substitution

Bribery and Kickbacks

Bid Rigging--Conspiracy or Collusion



# False Claims and Statements

**A False Claim** is **knowingly** presenting a claim for payment that is not true or accurate.

It also includes **knowingly** making or using false records or statements to obtain payment by the government.

Knowingly **failing to test** a product (as required by government specifications) or using **substandard** (not meeting specifications) **or defective products** are also false claims or statements.

The most common cases involve overcharging for time, materials, and equipment.



# Cost mischarging

**Cost mischarging** includes costs from one contract to another or among task orders.

Examples are:

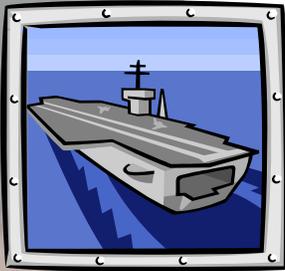
- Billing an employee's time to multiple contracts or between task orders
- Charging for employee rates not commensurate with their expertise

*Can an employee really work 38 hours per day on a project...?*

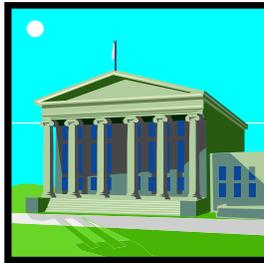


# LABOR COST MISCHARGING

DOD



STATE/PRIVATE



EPA GRANT



Work performed here.....



\$\$  
...but billed over here

ABC, Inc



# Conflicts of Interest

- **Conflicts of Interest** may occur when an individual or corporation is in a position to exploit a professional or official capacity in their personal or corporate benefit.
- **Conflicts of Interest** exist even if no improper act results from it, and can create an appearance of impropriety that can undermine confidence in the conflicted individual or organization.



# How do I deal with a Conflict of Interest?

- **Avoidance**

- The best way to handle conflicts of interests is to avoid them entirely.

- **Disclosure**

- Disclose any interests that could compromise your integrity and give the appearance of a conflict of interest.

- **Recusal**

- Those with a conflict of interest should not make decisions where such a conflict exists. The need for recusal varies depending upon the circumstance.



# Bribery and Kickbacks

**Bribery** is offering, giving, receiving, or soliciting something of value to influence the actions of an official as part of their public or legal duty. It alters the behavior or decisions of the person receiving the bribe.

*Example--a Contractor approaches the Public Works Director about an upcoming project, and offers him money in exchange for an advance copy of the bid package. The Director agrees, resulting in an unfair advantage to the contractor.*

**Kickback** is the result of a government employee receiving or soliciting something of value to influence the outcome.

*Example-- the Public Works director approaches a contractor and promises to award the contract in exchange for money or something else of value.*



# Product Substitution

**Product substitution** is supplying goods or services that do not meet contract specifications.

*For example, a contractor:*

- Delivers goods which do not conform to contract requirements without informing the government.*
- Uses foreign made products where domestic products are required (**Buy American provisions of the Act**)*
- Uses products that do not meet specifications.*
  - Thinner wall pipe than specified.*
  - Roofing: 20 year vs. 40 year.*
  - Electrical: Substandard pumps, panels, switches.*

Effects:

- Paying for something not received (pay for a Cadillac, but get a Chevy).*
- Increased maintenance costs (shorter useful life-20 year roof vs. 40 year).*
- Health, safety, environmental (sewage pump failure causes over-flow).*



# Bid Rigging

**Bid Rigging** is collusion between two or more competitors. It is a form of price fixing. It typically involves an agreement in which one party of a group of bidders will be designated to win the government bid.

These frauds generally involve:

***Subcontract bid rigging***--the conspirators agree not to submit bids, or submit inflated bids, in return for being awarded subcontracts from the successful bidder.

***Bid suppression***--some conspirators agree not to bid so that another conspirator can win the contract.

***Complementary bidding***--also called cover bidding--submitting a bid knowing it is too high or has unacceptable conditions.

***Bid rotation***--bidders “take turns” being the successful bidder.



# Case Example

## **Collusion and Conspiracy:**

A County received an loan for a sewer project. The County hired an engineering firm to manage the project, and turned control over to the engineer. The engineer advised the community to hire a specific contractor, even though the contractor had a poor work history.

The contractor abandoned the project before completing the work, resulting in over \$500,000 in Federal funds expended for work that was not performed.



# Case Example

## Allegations:

- Fraud against government
- Conspiracy
- False claims and false statements
- Product substitution



# Case Example

- \$10 million project--County hired contractor because bid was \$3 million under next lowest bid
- No involvement by County
- No monitoring by state
- Problems
  - Incomplete work:
    - Abandoned work at 70% complete
  - Poor construction:
    - 102 of 116 manholes not installed correctly
    - Improper slope and grade of collection system
  - Product substitution
    - Connected pipe with duct tape
  - False claims:
    - Billings for time and materials

# Case Example

Bad seal





# Case Example

Too many riser rings, faulty installation





# Case Example

Poor construction





# Case Example

- **Monitoring begins with Award**
- “...Board had received some negative information about this contractor, but they investigated the allegations and found them to be unsubstantiated.”
- Missed that contractor filed bankruptcy before bidding project
- Contractor bankrupted 6 prior companies
- 28 lawsuits and 21 judgments against contractor at time of award



# Warning Signs Ignored

**Sacramento Bee January 26, 2010**

- Sacramento City hired Advantage Demolition to install water meters using \$3.5 million of Recovery Act funds
- Advantage Demolition had several problems that could have raised red flags
  - In 2001, owner filed for bankruptcy protection.
  - Outstanding Tax liens totaling more than \$46,000
- Advantage Demolition supplied Performance Bonds
- Utilities officials didn't verify bonds before awarding contract
- Problems surfaced when workers complained about not being paid



# Warning Signs Ignored

## **Sacramento Bee – January 26, 2010**

- City admits \$3.5 million contract awarded based on falsified documents
- Public agencies typically require contractors to prove they are bonded, which reduces a municipality's risk
- The city paid Advantage Demolition \$65,000 to complete about 20 percent of the contract
- City Utilities Department followed normal contracting procedures and went with the lowest bidder
- "The City's Procurement Policy does not take into account the past history of the individuals submitting the bid if such information is not indicated in the bid or otherwise known to City staff".



# Warning Signs Ignored

## **Sacramento Bee – January 26, 2010**

- The City Council approved contracts with no discussion.
- The city will hire the second-lowest bidder to complete the second contract.
- The Utilities Department has started verifying bond information.
- U.S. EPA OIG is investigating the matter along with the California Contractors License Board



**NOW AT 6**

**Student Reinstated**

**Calling It Quits**

**"Tweet" From Space**

**Missing Money**

**CBS 13**  
CBS13.COM



# Red Flags

Fraud indicators may result from weak internal controls and lead to opportunities to commit fraud. Here are some “Red Flags:”

- Circumvention of competitive bidding requirements (bribery/kickbacks/bidrigging).
- Contractor claims containing altered, missing, or inadequate documentation (false claims).
- A contractor’s inability to provide supporting documentation (product substitution, false statements).
- Questionable transactions or agreements with related parties (conflicts of interest).
- Contractor’s timesheets that exceed reasonable periods of time in a workday (cost mischarging).



# Making a Referral

- Anyone may call and discuss concerns.
- Referrals can be based on hearsay, something that does not seem right, and inconsistencies.
- Your concerns do not need to be a “sure thing” to be referred to OI. You do not have to “prove” your case.
- Many investigations begin from referrals from concerned citizens and state, local and contactor employees.



# Making a Referral

What you should do:

- discuss your concerns with the OIG.
- seek answers to your questions in the normal course of business.
- cooperate with the OIG and expect to be contacted and involved.

What you should not do:

- change your normal course of business unless otherwise directed.
- tip off subjects to actual or pending investigation.
- protect someone who may be committing fraud.



# Key Documents

- Copy of Contracts
- Contractor billings and invoices
- Engineering records and project file reviews
- Original mailing envelopes/fax transmissions
- Reimbursement requests
- Claims to Federal government
- Electronic Funds Transfers and Checks



# Whistleblower Protections

**Section 1553** of the Recovery Act prohibits reprisals against a “whistleblower” of state and local government and contractor employees:

An employee of a non-Federal entity receiving Recovery funds, may not be discharged, demoted, or discriminated against for disclosing any information the employee reasonably believes is evidence of:

- gross mismanagement or waste of Recovery funds;
- a substantial and specific danger to public health or safety related to the implementation of the Recovery funds;
- an abuse of authority related to the implementation of the funds; or
- a violation of law, rule, or regulation related to a contract, grant, or other award of Recovery funds.



# Whistleblower protections

An employee who believes that they have been the subject of **reprisal** can submit a complaint to the OIG. The OIG shall investigate the complaint and submit the findings of the investigation to the person, the person's employer, the head of the appropriate Agency, or the Recovery Accountability and Transparency Board.



# Reprisal elements

- Must make valid Protected Disclosure
- Reprising Officials must have knowledge that disclosure was made.
- Reprisal (something bad) must take place
- Complainant must prove nexus between protected disclosure and reprisal

*Note: Without all 4 of these present no Whistleblower Protection is available.*



# Protected Activity

- Testifying
- Refusing to follow illegal order
- Participating in official investigation
- Related to a Whistleblower
- Participating in other programs
- covered by law, e.g. EEO process



# How do I Get Help?

## OIG Hotline

1-888-546-8740

On the web:

[www.epa.gov/oigearth.hotline.htm](http://www.epa.gov/oigearth.hotline.htm)

Email:

[recoveryreferrals.oig@epa.gov](mailto:recoveryreferrals.oig@epa.gov)



# Summary

Thank you for attending this presentation. Hopefully, you are now aware of the importance of monitoring ARRA funded projects and how to report fraud, waste, or abuse.

A large number of communities are receiving ARRA funding. Our job is to help you monitor the use of these funds.

If you suspect fraud, waste, or abuse, we are only a phone call or email away.