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UNITED STATES DEPARTMENT OF STATE  
AND THE BROADCASTING BOARD OF GOVERNORS  
*OFFICE OF INSPECTOR GENERAL*

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AUD-FM-IB-15-24

Office of Audits

June 2015

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## Audit of Radio Free Asia Expenditures

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**Acronyms**

BBG	Broadcasting Board of Governors
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
IBB	International Broadcasting Bureau
OIG	Office of Inspector General
OMB	Office of Management and Budget
OTF	Open Technology Fund
RFA	Radio Free Asia
U.S.C.	United States Code

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**Executive Summary**

The Broadcasting Board of Governors (BBG), an independent Federal agency that received approximately \$714 million in appropriated funds during FY 2013, oversees all U.S. Government-supported civilian international broadcasting. BBG provides about one-third of its budget to three grantees that develop news content and provide other key services. One of these grantees is Radio Free Asia (RFA). RFA's mission is to provide accurate and timely information, news, and commentary about events in designated Asian countries. BBG provides funding to finance RFA operations. BBG also provides funding for RFA to expand unrestricted access to information on the Internet. RFA created the Open Technology Fund (OTF) program to focus on Internet initiatives.

The purpose of this audit was to assist BBG in its efforts to monitor funds provided to RFA. Specifically, the objectives of this audit were to determine to what extent BBG monitored RFA's activities, RFA used OTF resources to accomplish program priorities, RFA complied with Federal procurement requirements and internal procurement processes for awarding OTF contracts, RFA returned unused unobligated funds to BBG at the end of the fiscal year, and RFA used grant funds provided by BBG in accordance with Federal regulations and the grant agreement. The scope and methodology for this audit are in Appendix A.

The Office of Inspector General (OIG) found that BBG did not have a well-defined structure to monitor RFA activities.<sup>1</sup> There was no specific office or person assigned primary responsibility for monitoring grantees, and staff performing monitoring activities did not have a clear understanding of their roles. This occurred, in part, because BBG did not have sufficient policies and procedures for grants monitoring. Further, BBG's Board of Governors did not exhibit support for BBG's efforts to increase grantee oversight. Although BBG developed a Corrective Action Plan to implement previous audit recommendations related to grants monitoring, the plan was not fully implemented at the time of this audit. As a result, BBG did not detect the deficiencies in RFA grant activities that OIG identified during this audit.<sup>2</sup>

OIG was unable to determine the extent to which RFA used OTF resources to accomplish program priorities (such as BBG's strategies and policies) because BBG did not provide sufficient guidance to RFA describing BBG's OTF strategies or program priorities. As a result, BBG could not be sure that RFA used OTF funds to achieve BBG's overall goals for the program. OIG also found that RFA did not fully comply with Federal procurement requirements for grantees or its own internal procurement process. Specifically, OIG identified instances of noncompliance with Office of Management and Budget (OMB) conflict-of-interest requirements. In addition, RFA did not sufficiently document its justification for the lack of competition in the OTF procurement process, and none of the contracts tested had independent cost estimates. Further, RFA did not comply with its internal OTF procurement process. For example, for five of six contracts tested, RFA funded the OTF projects even though RFA Advisory Council members

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<sup>1</sup> As indicated in the United States Code, 22 U.S.C. § 6204(a)(5), BBG is responsible for the oversight and administration of grants.

<sup>2</sup> In May 2015, OIG issued a management alert (*Management Alert: Broadcasting Board of Governors Significant Management Weaknesses*, MA-15-01) that reiterated issues identified in prior OIG reports related to BBG's oversight of grants.

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did not recommend the awards. These exceptions occurred, in part, because RFA had not developed and implemented a sufficient procurement policy and procedures for awarding OTF contracts. In addition, the process used by RFA for selecting projects was not adequate. As a result, there was no assurance that RFA received fair value for the contracts awarded to support OTF projects.

OIG also found that RFA did not return all unused unobligated funds to BBG at the end of FY 2013 as required by the grant agreement. OIG identified \$583,583 in unused funds that RFA should have returned to BBG. RFA's practice was to keep funds received from BBG for 5 years and, at the end of the 5-year period, request permission to use the unused funds for other purposes. Further, RFA did not have a sufficient process to regularly review unused funds to determine whether the funds were still needed. In addition, BBG did not have a process to oversee RFA's unused funds annually and ensure that funds not needed were either returned or were used for another allowable purpose. As a result, OIG is questioning \$583,583 in costs because the funds were not returned to BBG as required by the grant agreement.

OIG found that RFA generally used the grant funds provided by BBG in accordance with Federal regulations and the grant agreement. Of 199 non-personnel expenditures tested, amounting to \$1,673,537, OIG found that 194 expenditures, totaling \$1,656,505, complied with Federal regulations and the grant agreement and 5 expenditures, totaling \$17,032, were not in compliance. In addition to testing a sample of non-personnel expenditures, OIG reviewed a list of RFA's general ledger accounts and identified items that were specifically prohibited by Federal regulations totaling \$19,854. OIG also identified instances in which RFA's personnel-related costs were not in technical compliance with Federal law and grant requirements. Specifically, maximum salary levels for four of seven RFA positions OIG reviewed were higher than the maximum salary levels of comparable BBG positions. In addition, 4 of 11 benefits reviewed exceeded the benefits provided to Federal employees. The noncompliance occurred primarily because RFA benefits were required for some employees by a collective bargaining agreement. In addition, BBG did not perform a recent comparability study of benefits and salaries, as required, which would have allowed BBG to better determine whether the aggregation of RFA's benefits exceeded benefits provided to Federal employees. If BBG's comparability study found that the salaries and benefits offered to RFA employees exceeded those offered to Federal employees, these funds would have been deemed unallowable and could have been put to better use.

OIG made 21 recommendations to BBG that were intended to improve BBG oversight of RFA and therefore improve RFA's management of Government-provided resources. In its March 25, 2015, response (see Appendix B) to a draft of this report, BBG concurred with all 21 recommendations. Although no recommendations were addressed to RFA, OIG requested and RFA provided comments to a draft of this report, which are presented in Appendix C. Based on the responses from BBG and RFA, OIG considers 18 recommendations resolved (Recommendations 1-16, 19, and 21), 2 recommendations unresolved (Recommendations 17 and 20), and 1 recommendation closed (Recommendation 18). Management's responses and OIG's replies to those responses are presented in the body of this report following each recommendation. In addition, RFA provided general comments that were not directly related to

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the recommendations. A summary of RFA's general comments and OIG's replies are presented in Appendix D.

### **Background**

BBG is an independent Federal agency that oversees all U.S. Government-supported civilian international broadcasting. BBG received approximately \$714 million in appropriated funds during FY 2013. BBG's mission is to inform, engage, and connect people around the world in support of freedom and democracy via radio, television, and the Internet. A key strategic priority for BBG is to assist people in gaining access to information in countries where governments censor information for political purposes.

A Board of Governors oversees BBG. The Board is a nine-member bipartisan body consisting of the Secretary of State (ex officio) and eight private citizens appointed by the President. Some of the Board's responsibilities include the following:

- supervising broadcasting activities
- reviewing and evaluating the mission and operation of, and assessing the quality, effectiveness, and professional integrity of, broadcasting activities
- ensuring that international broadcasting is conducted in accordance with the law
- making and supervising grants for broadcasting and related activities and
- allocating funds appropriated for international broadcasting activities among the various elements of the International Broadcasting Bureau (IBB) and grantees.

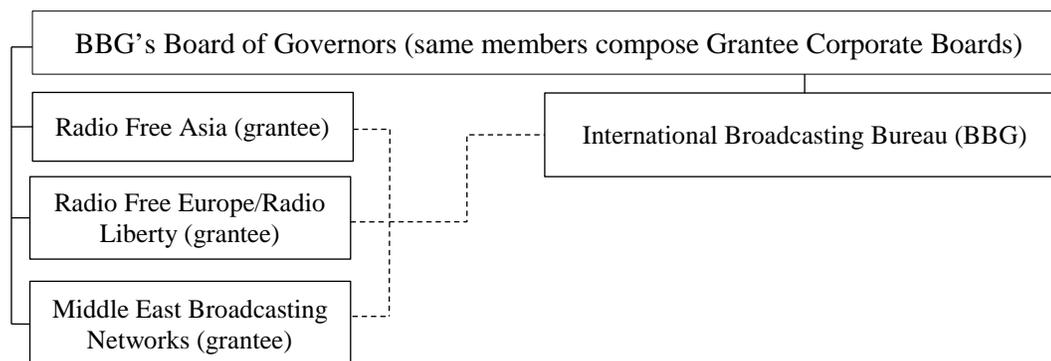
IBB, a significant component of BBG, maintains the global distribution network over which all BBG-funded news and information programming is distributed. IBB also performs administrative functions such as financial management, human resources, and information technology support. For example, IBB elements include BBG's Office of the Chief Financial Officer (CFO), Office of Human Resources, Office of Contracts, and Office of Technology, Services, and Innovation.

BBG provides about one-third of its budget to three grantees—RFA, Radio Free Europe/Radio Liberty, and Middle East Broadcasting Networks—which develop news content and provide other key services. The Corporate Boards of the three grantees are made up entirely of members of BBG's Board of Governors.<sup>3</sup> Figure 1 shows the organizational relationship of BBG's Board of Governors to the grantees as well as to IBB.

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<sup>3</sup> 22 U.S.C. § 6207(A)(1) expressly requires the Radio Free Europe board to “consist of the members of the [BBG].” BBG has implemented the same structure for the other two grantees.

**Figure 1. Board of Governors Relationship to Grantees and to IBB**



Source: BBG's Fiscal Year 2013 Performance and Accountability Report.

BBG has responsibility for monitoring and overseeing its grantees. At a minimum, BBG should maintain documentation of its monitoring and oversight of each grantee to ensure the grantee's compliance with the terms and conditions of the grant agreement<sup>4</sup> and Federal regulations. According to BBG's Grantee Handbook, information and activities that support grantee monitoring include "reports, as well as interaction with the grantee through meetings, site visits, telephone calls, written correspondence or audits."

### **Radio Free Asia**

RFA was created in response to congressional direction.<sup>5</sup> RFA's mission is to provide accurate and timely information, news, and commentary about events in designated Asian countries. RFA broadcasts news in nine languages to the People's Republic of China, Burma, Vietnam, Laos, Cambodia, Tibet, and North Korea. RFA is a private, nonprofit Section 501(c)(3) corporation.<sup>6</sup> RFA has its headquarters in Washington, D.C., and has overseas offices in eight countries throughout Asia.

BBG establishes an annual grant<sup>7</sup> with RFA to provide news and information programming. The amount of the grant is included in BBG's annual appropriation. The grant is established using a formal grant agreement that includes guidance on the types of programming that can be produced using grant funds. The grant includes a number of administrative requirements. For example, the grant requires that BBG be given 5-days advance notice of any new contracts exceeding \$350,000 and requires RFA to return to BBG any unused grant funds at the end of the fiscal year. The grant agreement also includes a requirement that BBG should conduct an annual review to measure RFA's performance in achieving the purposes of the

<sup>4</sup> BBG Grantee Handbook.

<sup>5</sup> 22 U.S.C. § 6208, "Radio Free Asia."

<sup>6</sup> Sec. 501(c)(3) of the Internal Revenue Code establishes the criteria for qualifying as a tax-exempt organization. To be exempt from taxation on earnings, an organization cannot be organized to operate for the benefit of any private interests, and no part of the organization's net earnings can be for the benefit of a private shareholder or individual.

<sup>7</sup> A grant is an award of financial assistance, the principal purpose of which is to transfer a thing of value from a Federal agency to a recipient to carry out a public purpose. A grant is different from a contract in that a contract is used to acquire property or services for the Federal Government's direct benefit or use.

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agreement and compliance with its terms. Further, the grant agreement requires RFA to comply with OMB Circulars No. A-110,<sup>8</sup> A-122,<sup>9</sup> and A-133;<sup>10</sup> parts of Title 5 of the United States Code (U.S.C.);<sup>11</sup> and Federal travel policy.<sup>12</sup> The grant agreement includes some limiting factors on how RFA may spend grant funds. For example, grant funds cannot be used for first-class travel accommodations.

In FY 2013, BBG provided about \$37.5 million in appropriated funds to finance RFA operations (program and support services). RFA did not receive funding from any other sources. According to the grant agreement, RFA “may use the Grant Funds solely for planning and operating expenses related to international broadcasting and administration thereof.” In FY 2013, BBG provided \$4.3 million in additional funds to RFA for Internet anti-circumvention projects, which, according to the grant agreement, means “expanding unrestricted access to information on the Internet.”<sup>13</sup>

Before receiving grant funds, RFA must submit a financial plan to BBG describing how it will use the funds received. The financial plan must be consistent with the strategy and purposes approved by BBG. The financial plan also estimates RFA’s monthly expenditures for various items.

RFA annually prepares financial statements that include information on its assets, liabilities, revenue, and expenditures. The financial statements are audited by an independent public accounting firm as required by Federal policy.<sup>14</sup> For the FY 2013 financial statements, RFA received an unmodified opinion (which is the best opinion possible).

### **Program and Support Services**

During FY 2013, RFA spent approximately \$37.6 million for program and support services. The program services area is separated into two functions—broadcasting and programming. Broadcasting includes the costs, such as costs for broadcasters’ salaries, to prepare news reports and commentary about events in the designated Asian countries. Programming includes the costs for overseeing the reporting and editing done by language services, the wire room editors, and the researchers. Support services include expenses for administrative costs, such as corporate insurance and auditing fees, and technical expenses, such as office and

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<sup>8</sup> OMB A-110, *Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations* (codified in the Code of Federal Regulations (CFR) at 22 CFR pt. 518.5 for BBG).

<sup>9</sup> OMB A-122, *Cost Principles for Non-Profit Organizations* (codified at 2 CFR pt. 230).

<sup>10</sup> OMB A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

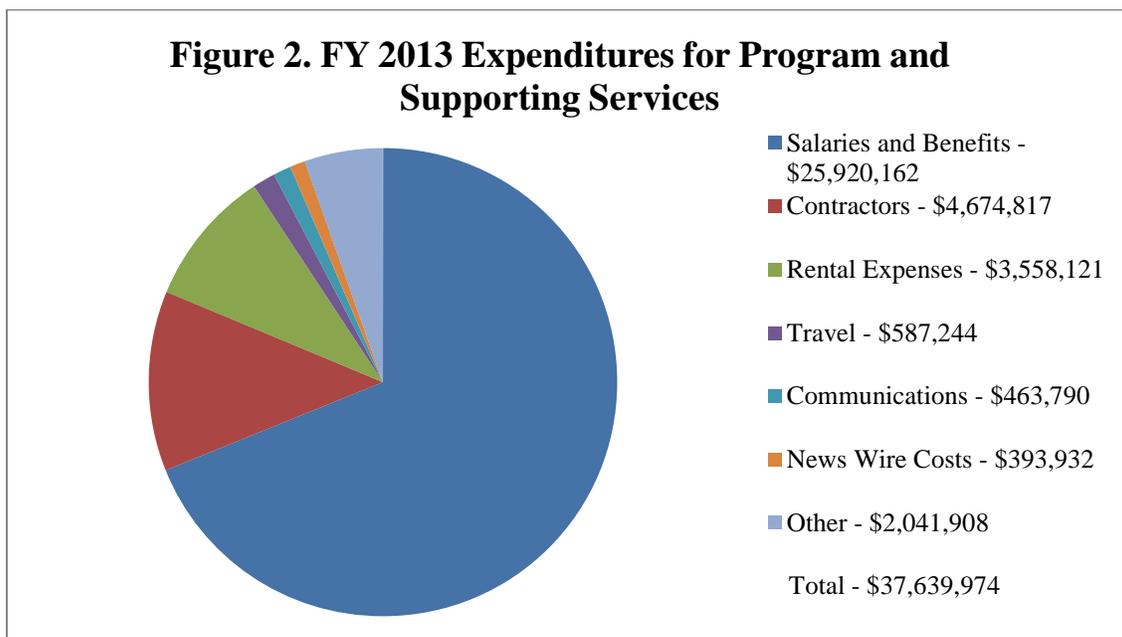
<sup>11</sup> 5 U.S.C. pt. III.

<sup>12</sup> While not specifically mentioned in the grant agreement, the requirement to comply with 48 CFR pt. 31.205-46, “Travel costs,” is incorporated in OMB Circular A-122, which is included as a requirement in the grant agreement.

<sup>13</sup> According to RFA’s Open Technology Fund Annual Report for 2012, the Internet is a crucial platform for freedom of expression and the exchange of ideas and information. However, some governments monitor and obstruct the use of the Internet by individuals. RFA (through BBG) is working to empower people to overcome governments that illegitimately block or censor the Internet.

<sup>14</sup> OMB A-133, subpt. B—Audits, §\_.200(a) and (b).

computer equipment and Internet connectivity. Figure 2 provides the amount by category of RFA expenditures from program and support services funding in FY 2013.



Source: OIG prepared using RFA's Statement of Functional Expenses for the Year Ended September 30, 2013.

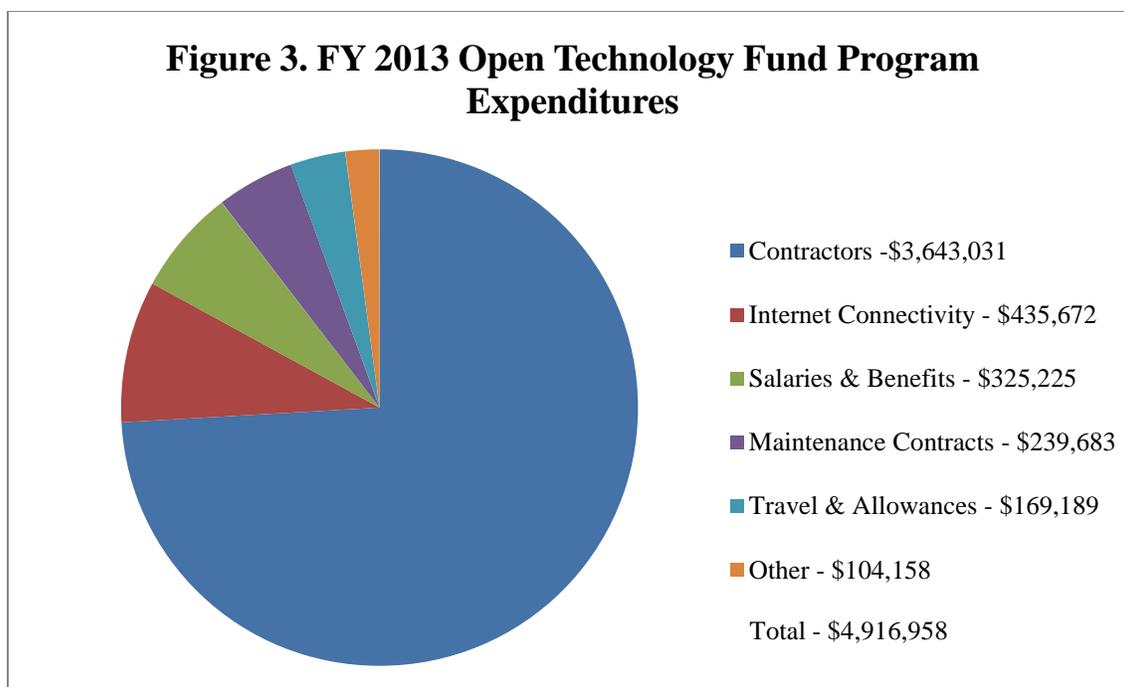
The largest category of expenditures, totaling \$25.9 million, related to salaries and benefits. As of September 30, 2013, RFA had 253 employees. Another significant category of expenditures was related to contractors. For instance, RFA used funds (provided by the Government) to pay for editorial consultants' services and for the services of the financial statement auditors. RFA also used approximately \$3.6 million for rental costs, which included the rent for its headquarters offices in Washington, D.C., and for its overseas offices in eight countries.

### **Open Technology Fund**

In FY 2012, RFA established the OTF, which uses Internet anti-circumvention funding provided by BBG to support Internet freedom efforts.<sup>15</sup> RFA uses the funding for the development and implementation of technologies that can circumvent censorship and surveillance of the Internet to benefit all U.S. international broadcasting. For the year ended September 30, 2013, OTF expenses were approximately \$4.9 million. Figure 3 provides the amount of RFA's OTF expenditures by category in FY 2013.

<sup>15</sup> This program is coordinated with BBG, the U.S. Department of State, and the U.S. Agency for International Development, all of which receive funding to support Internet freedom.

**Figure 3. FY 2013 Open Technology Fund Program Expenditures**



Source: OIG prepared using RFA's Statement of Functional Expenses for the Year Ended September 30, 2013.

The largest category of OTF expenditures, totaling approximately \$3.6 million, was for contractors working on OTF projects to support Internet freedom. Another significant category of expenditures, totaling approximately \$400,000, was for Internet connectivity projects, which included translating OTF tools into multiple languages. Additionally, expenditures for salaries and benefits totaled approximately \$325,000.

### **Prior OIG Reports**

In 2011, OIG issued an inspection report<sup>16</sup> that identified concerns with RFA's procurement practices. These concerns included RFA's lack of advertising for procured services, weak justifications for sole-source purchases, and no approval process for sole-source justifications. OIG did not make formal recommendations related to these issues but instead made informal recommendations because the inspectors found no evidence of impropriety on the part of RFA or vendors. RFA officials agreed with OIG's assessment and said that RFA would address the sole-source procurement process and had directed the vice president of Administration and Finance to approve sole-source procurements.

A 2013 OIG inspection report<sup>17</sup> about BBG discussed the role of BBG's Board of Governors with respect to the grantees. Specifically, the report stated that the Governors were expected to supervise broadcasting activities of the various broadcasting entities, including the grantees. However, over time, the Governors' level of supervision and their focus slipped from strategic guidance to involvement in day-to-day administration, which had contributed to

<sup>16</sup> *Inspection of Radio Free Asia* (ISP-IB-11-29, Mar. 2011).

<sup>17</sup> *Inspection of the Broadcasting Board of Governors* (ISP-IB-13-07, Jan. 2013).

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inefficiency and confusion over roles and responsibilities, thereby weakening the ability of BBG's staff to manage effectively.

In FY 2014, OIG reported<sup>18</sup> a material weakness in internal control related to BBG's management of its grantees. Specifically, although BBG was responsible for monitoring how its grantees used BBG funds, the auditors identified numerous instances where BBG did not sufficiently monitor its grantees. The report stated that because of insufficient monitoring, BBG did not have a complete understanding of the grantees' financial management practices and was unaware that the grantees had significant amounts of unused funds.

In FY 2014, OIG reported<sup>19</sup> that BBG did not provide sufficient oversight of another grantee. Specifically, BBG did not sufficiently monitor activities of the grantee, adequately define roles and responsibilities related to grant oversight, and maintain adequate internal communications related to the grantee. Further, the format of financial reports required from the grantee did not include information on unfunded liabilities, and BBG did not perform benefit comparability studies in a complete or timely manner.

In 2015, OIG issued a Management Alert<sup>20</sup> that summarized significant vulnerabilities that OIG had identified in prior OIG projects, including issues related to BBG's management and oversight of its grantee organizations.

### **Objectives**

The objectives of this audit were to determine to what extent BBG monitored RFA's activities and to determine to what extent RFA:

- used OTF resources to accomplish program priorities;
- complied with Federal procurement requirements and internal procurement processes for awarding OTF contracts;
- returned unused, unobligated funds to BBG at the end of the fiscal year; and
- used grant funds provided by BBG in accordance with Federal regulations and the grant agreement.

### **Audit Results**

#### **Finding A. Broadcasting Board of Governors Did Not Have a Well-Defined Structure To Monitor Grantee Activities**

Agencies have a responsibility to develop and maintain effective internal control, including ensuring sufficient monitoring of the agencies' operations. OIG found that BBG did

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<sup>18</sup> *Independent Auditor's Report on the Broadcasting Board of Governors 2013 Financial Statements* (AUD-FM-IB-14-14, Dec. 2013).

<sup>19</sup> *Audit of Radio Free Europe/Radio Liberty After-Employment Benefits* (AUD-FM-IB-14-34, Sept. 2014).

<sup>20</sup> *Management Alert: Broadcasting Board of Governors Significant Management Weaknesses* (MA-15-01, May 2015.)

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not have a well-defined structure to monitor grantee activities. No single BBG office or person was assigned primary responsibility for monitoring grantees, staff performing monitoring activities did not have a clear understanding of their roles, and BBG had not formally designated a grants officer or analyst to monitor the RFA grant. One reason that BBG did not have a well-defined grantee monitoring structure was that BBG had not developed clear policies and procedures for overseeing grantees. Although BBG had developed a Grantee Handbook, the Handbook lacked specificity in many key areas, and some employees performing grant monitoring activities were unfamiliar with the Handbook. Further, the Board of Governors did not support BBG efforts to increase oversight of grantees. As a result of not having a structure in place to monitor grantee activities, BBG did not detect deficiencies in RFA grant activities that OIG identified during this audit.

### **Lack of Well-Defined Grantee Oversight Structure**

BBG is responsible for the oversight and administration of grants<sup>21</sup> in accordance with the United States International Broadcasting Act of 1994, as amended;<sup>22</sup> OMB Circular A-110;<sup>23</sup> and BBG's Grantee Handbook. Further, according to OMB, the proper stewardship of Federal resources is an essential responsibility of agency managers and staff. Federal employees must ensure that Federal resources are used efficiently and effectively to achieve desired objectives. Resources must be used consistent with agency missions, in compliance with laws and regulations, and with minimal potential for waste, fraud, and mismanagement. Management has a fundamental responsibility to develop and maintain effective internal control.<sup>24</sup> According to the Government Accountability Office, internal control should generally be designed to ensure that ongoing monitoring occurs in the course of normal operations. The monitoring should be performed continually and ingrained in the agency's operations. This includes regular management and supervisory activities, comparisons, reconciliations, and other actions people take in performing their duties.<sup>25</sup>

OIG found that BBG did not have a well-defined structure for overseeing RFA or its other grantees. Specifically, no single individual or office had primary responsibility for monitoring grantees. Instead, a number of individuals and offices were involved in grantee oversight. For example, the Board of Governors performed some grantee monitoring while other BBG officials and offices, such as the Director of Global Operations, the Budget Office, and the Office of Strategy and Development, had a role in the oversight process. Even within an office, no single individual had primary responsibility for grantee oversight. For example, in the Budget Office, one employee processed payments to grantees, another employee allocated funds, and a third employee was performing day-to-day financial monitoring of the grantees.

Some of the employees who were performing grant oversight did not have a clear understanding of their roles in the oversight process. For example, one individual responsible for

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<sup>21</sup> 22 U.S.C. § 6204(a)(5).

<sup>22</sup> 22 U.S.C. § 6201-6216.

<sup>23</sup> OMB Circular A-110 (codified at 22 CFR pt. 518.5 for BBG).

<sup>24</sup> OMB Circular A-123, *Management's Responsibility for Internal Control*.

<sup>25</sup> Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1.

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monitoring the performance of BBG grants stated that she viewed her responsibilities as performance planning and reporting and not as monitoring. This employee indicated that she had never read the RFA grant agreement. Further, the person who was performing some of the financial monitoring duties was unclear about his authority to work directly with RFA and other grantees or to request information from the grantees.

In addition, BBG did not formally designate a grants officer or a grants analyst to oversee the RFA grant. In general, grants officers are responsible for monitoring the performance of the grantee through reviewing performance reports and financial status reports, conducting site visits of the grantees, maintaining official grant files, and signing and issuing amendments to grant awards. According to a BBG official, the Director of Global Operations has grant authority because of his position. However, this would not take the place of formally designating a grants officer with the appropriate training and experience to oversee the grant.

### **Insufficient Policies and Procedures**

One reason that BBG did not have a well-defined grantee monitoring structure was that BBG did not develop sufficient and clear policies and procedures for overseeing grantees, including information on employees' roles and responsibilities. One BBG official stated that the lack of clear procedures was the root cause of inadequate grantee monitoring. The BBG Grantee Handbook lacked specificity in many sections. For example, the Handbook did not assign certain oversight responsibilities to specific offices. Many of the responsibilities for overseeing grantees were included in a general section labeled "BBG responsibilities." No details were provided on which office within BBG was responsible for the grant agreement, the grant files, general monitoring, or periodic reviews.

In addition to the limitations in the Grantee Handbook, some employees involved in grant monitoring were not aware that the Handbook existed. For example, the BBG employee who monitored RFA's financial performance stated that he was not aware of the Grantee Handbook until the financial statement auditors asked him about it in FY 2013. The BBG employee who oversees the performance portion of the RFA grant also said that she was not familiar with the Handbook.

BBG also did not have a policy on required training for BBG officials who were responsible for overseeing grantees. One employee involved in overseeing RFA's financial performance indicated that he had received only limited formal training related to grantees and no formal training on how to monitor grantees. Further, BBG did not have a policy requiring that a grants analyst or grants officer be assigned to monitor grantee activities.

One BBG official stated that there were many views in BBG about what constituted monitoring grantees. The official indicated that some officials believed that oversight was not needed because funds were basically "passed through" BBG to RFA. Other officials believed that oversight was sufficient because the members of BBG's Board of Governors were also the Board of Directors for the grantees. Alternatively, some BBG officials believed that that BBG should have a robust monitoring process because BBG had not received an OMB waiver indicating that BBG and RFA did not have to comply with Federal requirements.

### **Board Did Not Support Efforts To Improve Grant Oversight**

The lack of a well-defined grants monitoring structure also occurred because BBG's Board of Governors did not support efforts to improve grant oversight. In order for BBG to implement an effective grants monitoring infrastructure, the Board must support that effort. Ensuring an appropriate internal control environment is ultimately the responsibility of the Board of Governors. However, OIG found that the Board was not setting a "tone at the top"<sup>26</sup> to demonstrate its support of efforts to improve grantee oversight, even though BBG is responsible for the oversight and administration of grants.<sup>27</sup> OIG auditors attended two separate meetings attended by Board Members, BBG staff, and grantee representatives. In both meetings, the President of RFA raised concerns with BBG's efforts to improve grants monitoring, and Board Members either supported the President of RFA's position or remained silent, thereby allowing RFA to effectively limit the oversight of the grant.

For example, during one meeting, BBG's CFO and a BBG contractor were discussing an initiative to develop policies and procedures to better oversee the grantees. RFA's President questioned the CFO's authority to improve oversight specifically related to OTF funds and stated that the CFO did not have the authority to increase oversight of the grantees. One Board Member concurred with the RFA President that the CFO did not have authority to improve oversight of grantees, especially related to OTF. The Board Chairman stated that the Board would consider the need for additional oversight at a later time, once more progress was made.

At another meeting, BBG officials discussed the development of a committee that would determine the projects that should be funded using Internet anti-circumvention funding, including projects funded by RFA through the OTF program. RFA's President stated that the Committee should be responsible only for BBG Internet anti-circumvention projects and not for RFA OTF projects. None of the Board Members disagreed with the RFA President's statements. In fact, one Board Member was supportive of RFA's efforts while being critical of BBG's internal efforts.

If improvement in RFA grant oversight is to be realized, it is imperative that the Board of Governors support the efforts of BBG staff to improve internal controls related to the oversight of BBG grantees. If the Board is unable to separate its roles as Board Members for BBG and Board Members for RFA, then it should formally recuse itself from involvement in the development of grant monitoring controls.

### **BBG's Efforts To Improve Grants Monitoring**

In FY 2014, BBG developed a Corrective Action Plan that outlined certain control improvements for grantee monitoring. The external firm developing the Corrective Action Plan recommended a number of areas that should be improved, including the following:

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<sup>26</sup> According to the Association of Certified Fraud Examiners, "tone at the top" refers to the atmosphere created in the workplace by the organization's leadership.

<sup>27</sup> 22 U.S.C. § 6204(a)(5).

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- Update the Grantee Handbook to include specific procedures for the monitoring of grantees by role.
- Define roles and responsibilities within the organization in regards to grant administration and oversight.
- Establish a process to consolidate grantee monitoring procedures and develop a plan to communicate the results.

As of August 2014, this plan was not substantively implemented. According to a BBG official, BBG made progress on the new monitoring procedures but had not yet vetted them with stakeholders—specifically OMB and the grantees.

### **Insufficient Monitoring Allowed Grantee Issues To Go Undetected**

Because BBG did not have a sufficient oversight structure in place to monitor grantees and administer grant agreements, it did not detect issues that OIG identified during this audit. These issues are presented as Findings B, C, D, and E in this report.

**Recommendation 1.** OIG recommends that the Broadcasting Board of Governors define its grant monitoring structure, formally document the roles and responsibilities of all parties involved in the grant monitoring process, and revise its Grantee Handbook accordingly.

**BBG Response:** BBG concurred with the recommendation, stating that it had “drafted a revised Grantee Handbook, which outlines the roles and responsibilities of various Agency offices in grant oversight and administration.” BBG further stated that the Handbook was “pending internal review and approval” and that it anticipated that the Handbook would be approved and in use “by the end of the 1st Quarter of FY 2016.”

**OIG Reply:** Based on BBG’s concurrence and planned corrective actions, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts a revised Grantee Handbook that defines the grant monitoring structure and documents the roles and responsibilities of all parties involved in the grant monitoring process.

**Recommendation 2.** OIG recommends that the Broadcasting Board of Governors develop and implement a comprehensive grant oversight program and revise its Grantee Handbook to document the specific procedures for the grant oversight program.

**BBG Response:** BBG concurred with the recommendation, stating that it has “drafted a grant monitoring program” that “aligns with its revised Grantee Handbook, as well as OMB 2 CFR 200 requirements.” BBG further stated that the draft grant monitoring program is “pending internal review and approval.”

**OIG Reply:** Based on BBG’s concurrence and planned corrective actions, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation showing that BBG has developed and implemented a

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comprehensive grant oversight program and revised its Grantee Handbook to document the specific procedures for the grant oversight program.

**Recommendation 3.** OIG recommends that the Broadcasting Board of Governors (BBG) develop and implement a training plan for all employees involved in grant oversight as determined in response to Recommendation 1. This training plan should cover both Government-wide requirements for grant oversight and also BBG's internal grants policies and procedures. BBG should revise its Grantee Handbook to include the training plan.

**BBG Response:** BBG concurred with the recommendation, stating that training slides are being "developed for both the Federal and Non-Federal entities as a part of a grant monitoring program" and that BBG employees who are responsible for grantee activities have "enrolled in grant management training."

**OIG Reply:** Based on BBG's concurrence, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation showing that BBG has developed and implemented a training plan for all employees involved in grants oversight and revised its Grantee Handbook accordingly.

**Recommendation 4.** OIG recommends that the Broadcasting Board of Governors (BBG) formally designate a grants analyst to monitor Radio Free Asia. As part of the designation, BBG should ensure that the grants analyst's responsibilities are clearly defined and communicated to that employee.

**BBG Response:** BBG concurred with the recommendation, stating that it is "actively recruiting an experienced Grants Manager." BBG provided documentation showing that a vacancy announcement for the position had been issued. BBG further stated that it anticipated that "a Grants Manager will be onboard by the 3rd Quarter of FY 2015" who "will lead the grant monitoring efforts, in cooperation with a budget analyst."

**OIG Reply:** Based on BBG's concurrence and planned corrective actions, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation showing that BBG has designated a Grants Manager and that the Grants Manager's responsibilities are clearly defined.

**Recommendation 5.** OIG recommends that the Board of Governors formally designate a high level Broadcasting Board of Governors (BBG) official, such as the Chief Executive Officer, as the official responsible for approving initiatives to improve BBG's grant oversight process.

**BBG Response:** BBG concurred with the recommendation. BBG stated that based on delegation of authority from the Board, BBG's interim Chief Executive Officer/Director has "authority to approve initiatives to improve BBG's grant oversight process."

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**OIG Reply:** Based on BBG’s concurrence, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts the official delegation of authority from the Board to the interim Chief Executive Officer.

**Recommendation 6.** OIG recommends that the Broadcasting Board of Governors (BBG) ensure that the Board of Governors immediately receives training and guidance on its responsibilities as a Board. This training and guidance should include, but not be limited to, information on Federal requirements for overseeing grantees and BBG’s internal grant oversight policies and procedures. The training should also address the Board’s responsibilities for ensuring that BBG complies with Federal grants regulations. In addition, BBG should develop a plan to provide refresher training to the Board on its responsibilities annually.

**BBG Response:** BBG concurred with the recommendation, stating that it planned to provide training to the Board of Governors “on Federal requirements for overseeing grantees and BBG’s internal grant oversight policies and procedures, including, for example, the relevant circulars of the Office of Management and Budget.”

**OIG Reply:** Based on BBG’s concurrence and planned corrective actions, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation showing that members of BBG’s Board of Governors have received training on responsibilities for overseeing grantees and also that BBG has developed a plan to provide refresher training to the Board annually.

**Finding B. Broadcasting Board of Governors Did Not Provide Sufficient Guidance on the Use of Open Technology Fund Resources**

The grant agreement between BBG and RFA states that grant funds provided to RFA should be used to “promote and implement” BBG “strategy and policy.” OIG was unable to determine the extent to which RFA used OTF resources to accomplish program priorities (such as BBG’s strategies and policies) because BBG did not provide sufficient guidance to RFA describing BBG’s OTF strategies or program priorities. As a result, BBG could not ensure that RFA prioritized the use of the limited OTF funds to achieve BBG’s overall goals for the program.<sup>28</sup>

To determine whether RFA’s OTF projects accomplished program priorities, OIG reviewed 30 OTF contracts,<sup>29</sup> totaling \$7.8 million. Based on the OTF mission statement, RFA uses OTF funds for “projects that develop open and accessible technologies promoting human rights and open societies” and to “advance inclusive and safe access to global communication networks.” An example of the type of projects funded by RFA’s OTF funds was for the development of software for operating systems aimed at supporting the practice of journalistic

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<sup>28</sup> As indicated in 22 U.S.C. § 6204(a)(5), BBG is responsible for the oversight and administration of grants.

<sup>29</sup> RFA funded 47 contracts using OTF funds during FYs 2012 and 2013. However, 17 of the contracts related to security audits or service contracts. Therefore, for the purposes of audit testing, OIG considered only the 30 contracts that related to OTF projects. The section “Detailed Testing Methodology” in Appendix A provides details on the work performed.

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whistleblowing,<sup>30</sup> which gave people the tools necessary to start their own journalistic whistleblowing initiative. Another funded project was intended to build servers to support secure text messaging functionality for a mobile device platform.

However, OIG could not determine whether the projects related to BBG's priorities for the OTF program because BBG had not provided detailed, formal guidance to RFA on its strategies or policies for the program. Although BBG Board Members provided feedback to RFA on OTF projects, the only formal document with instructions to RFA on the use of OTF funds was the grant agreement. The FY 2013 grant agreement stated that RFA was authorized to use OTF funds for "costs associated with expanding unrestricted access to information on the internet." However, the grant agreement did not include details on BBG's program priorities or strategies.

RFA officials stated that they informed BBG officials (including members of BBG's Board of Governors and IBB officials) about OTF projects that RFA planned to fund and that BBG did not notify RFA that any of the proposed projects were improper. However, one IBB official stated that IBB officials did not object to proposed OTF projects because BBG's Board of Governors typically agreed with RFA's projects. While informal feedback from the Board is useful, it does not take the place of a formal, agreed-upon framework on how OTF funds should be spent to achieve BBG's strategies and policies.

BBG did not provide formal guidance to RFA on the use of OTF funds to achieve BBG's strategies. Thus, BBG could not be assured that RFA used OTF funds in a manner that met BBG's priorities for the OTF program. Developing and implementing better guidance on how RFA is to use the funds would assist both BBG and RFA in prioritizing work and ensuring resources are efficiently used to achieve desired outcomes.

**Recommendation 7.** OIG recommends that the Broadcasting Board of Governors (BBG) develop a formal framework describing how Radio Free Asia should use Internet anti-circumvention funds. This framework should describe BBG's priorities for the use of the funds.

**BBG Response:** BBG concurred with the recommendation, stating that it is "currently drafting policy and procedures designed to provide oversight for the use of all Internet Anti-Censorship funds to ensure usage is in line with appropriation language, BBG strategy, and applicable procurement process and approvals."

**OIG Reply:** Based on BBG's concurrence and planned corrective actions, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation showing that BBG has developed a formal framework describing how Internet anti-circumvention funds can be used, including BBG priorities.

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<sup>30</sup> An RFA official defined journalistic whistleblowing as people in closed countries who report on human rights issues, corruption, illegal logging, disappearances, or other issues via the Internet.

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**Recommendation 8.** OIG recommends that the Broadcasting Board of Governors (BBG) revise the grant agreement with Radio Free Asia (RFA) to provide guidance to RFA on the newly developed framework describing BBG's priorities for the use of the Internet anti-circumvention funds, as determined in response to Recommendation 7.

**BBG Response:** BBG concurred with the recommendation. BBG stated that in its FY 2015 Operating Plan that was sent to Congress, the Board "expressed its intent to establish a sound oversight mechanism for any funds granted to RFA." The scope of the Board's direction to BBG's interim Chief Executive Officer/Director "authorizes the inclusion of conditions, including imposition of these recommended requirements, in any subsequent grant amendment."

**OIG Reply:** Based on BBG's concurrence, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation showing that the grant agreement with RFA has been updated to include guidance on the priorities for the use of the Internet anti-circumvention funds.

### **Finding C. Radio Free Asia Did Not Comply With Federal Procurement Requirements or Internal Procurement Processes**

OIG found that RFA did not comply with Federal procurement requirements for grantees. OIG identified instances in which RFA and its agents did not comply with OMB conflict-of-interest procurement requirements for grantees. Specifically, OIG found that RFA entered into 14 contracts, totaling \$4.0 million (51 percent of the amount of OTF FYs 2012 and 2013 project-related contracts), with organizations that had some affiliation with either RFA officials or members of the OTF Advisory Council.<sup>31</sup> Further, of six RFA contracts tested, OIG found that none of the contracts fully complied with other Federal procurement requirements for grantees. Specifically, none of the six contracts were competed, and RFA did not have adequate justification for the lack of competition. Further, RFA did not develop formal independent cost estimates or show evidence of cost or price analyses for all six contracts. Although OIG found that RFA performed contract administration tasks related to monitoring the six contracts, OIG identified four contracts where contractual deadlines were missed and no action was taken by RFA to address the condition.

RFA also did not comply with its own internal procurement process<sup>32</sup> for OTF projects. For example, in some cases RFA funded projects that Advisory Council members did not recommend. In addition, RFA did not have evidence that the RFA Legal Counsel and President approved each of the projects that were funded, as required by RFA's internal process.

These exceptions occurred, in part, because RFA's conflict-of-interest policy was ineffective and conflict-of-interest disclosure statements were not always maintained. In

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<sup>31</sup> RFA used an Advisory Council to evaluate project proposals prior to awarding OTF contracts. According to the OTF website, the 19 Advisory Council members are not RFA employees but are volunteers who are employed by universities, foundations, and private companies.

<sup>32</sup> RFA's process for OTF procurements, specifically contract awards, was included on its website.

addition, RFA did not have detailed procurement policies and procedures for the OTF program. Additionally, OTF staff was not familiar with the acquisition process, and RFA did not have an approach to monitor procurements to ensure that RFA’s internal process, outlined on the OTF website, was followed. Based on these concerns, RFA and BBG should reconsider RFA’s process for evaluating and selecting OTF projects. Because RFA did not comply with Federal procurement requirements or its own internal process, there was no assurance that BBG and RFA received fair value for OTF projects.

**Radio Free Asia Did Not Comply With Federal Procurement Requirements for Grantees**

BBG’s grant agreement with RFA requires that RFA’s procurement processes comply with OMB guidance.<sup>33</sup> OIG found that RFA did not comply with the OMB procurement standards for grantees. Specifically, RFA did not ensure that its employees and agents complied with OMB requirements related to real or apparent conflicts of interest. OIG found that RFA entered into 14 contracts, totaling \$4.0 million,<sup>34</sup> with organizations that had some affiliation with either RFA officials or members of the OTF Advisory Council. In addition, RFA did not comply with other procurement requirements related to competition, cost estimates, and contract administration.

**Radio Free Asia Did Not Comply With Conflict-of-Interest Requirements for its Employees**

OMB’s procurement standards for grantees state, “No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent . . . has a financial or other interest in the firm selected for an award.”<sup>35</sup> OIG found that RFA did not comply with this requirement. Some RFA officials who determined which OTF proposals to fund were affiliated with organizations that received OTF funding. Specifically, OIG identified four RFA officials who had some affiliation with two organizations that were awarded a total of seven contracts during FYs 2012 and 2013.<sup>36</sup> Table 1 provides details of the organizations and the number of contracts awarded to them.

**Table 1. RFA Officials Affiliated With Organizations That Received OTF Funding**

<b>Organization</b>	<b>Number of Contracts Awarded</b>	<b>Amount of Contracts Awarded</b>
New America Foundation	5	\$1,411,800
Freedom2Connect	2	1,200,000
Totals	7	\$2,611,800

Source: OIG developed based on a review of the Internet and OTF contracts.

<sup>33</sup> The grant agreement requires that RFA procedures be in compliance with OMB Circular A-110, which was codified in 22 CFR pt. 518.5.

<sup>34</sup> These 14 contracts reflect approximately 51 percent of the number of OTF project-related contracts entered into during FYs 2012 and 2013.

<sup>35</sup> 22 CFR pt. 518.42, “Codes of Conduct.”

<sup>36</sup> One of the organizations was also affiliated with three Advisory Council members.

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**New America Foundation.** RFA awarded five contracts, amounting to \$1.4 million, to New American Foundation. A senior RFA official served as a Senior Technology Fellow with New America Foundation's Open Technology Initiative from 2009 through 2011. Although the official did not work for New America Foundation at the time of the contract awards, his recent employment for this organization gives the appearance of a conflict of interest that should have been considered before the awards were made.

**Freedom2Connect Foundation.** The President of RFA established the Freedom2Connect Foundation (Foundation) in 2011 as a private non-profit 501(c)(3) organization.<sup>37</sup> In addition, RFA employees serve as the Secretary and Treasurer of Freedom2Connect.<sup>38</sup> According to an RFA official, the purpose of the Foundation is to "raise private money and merge it with public money to take on better projects" for OTF. RFA awarded two contracts, totaling \$1.2 million, to the Foundation for anti-censorship projects.

The RFA President informed OIG that she disassociated herself from the Foundation after it was established. However, on her conflict-of-interest form for 2012, she lists herself as a Freedom2Connect advisor. Regardless of the RFA President's current role, there is an association between the RFA President and the Foundation that creates the appearance of a conflict of interest. In addition, other RFA employees continue to volunteer their services to the Freedom2Connect Foundation. Additionally, the Foundation's address and suite number are the same as RFA's address and suite number,<sup>39</sup> and RFA is the registered agent for the Foundation.

Following RFA's \$1.2 million contract award to Freedom2Connect, the Foundation gifted the entire amount to the University of California-Berkeley (Berkeley) in support of "anti-censorship research." RFA officials stated that the Department of State was partially funding the same project and the RFA President believed the entire project should be funded. However, OIG noted that three of RFA's Advisory Council members questioned the Foundation project because of concerns with the project proposal. For example, one Council member said that the work was praiseworthy but "extraneous to RFA's goals," and another member said that it "feels interesting on a theoretical basis, but might be unlikely to succeed in a real-world environment."

In addition to the factors related to the apparent conflicts of interest prohibited by OMB guidance setting forth the uniform administrative requirements for grants, RFA also did not comply with OMB guidance that prohibits grantees from using Government funds for donations or contributions.<sup>40</sup> According to RFA officials, RFA provided funding to Berkeley as a gift through the Foundation to decrease the 53.5 percent overhead rate charged by Berkeley for

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<sup>37</sup> An organization that qualifies for tax exemption under Section 501(c)(3) of the Internal Revenue Code is commonly referred to as a "charitable organization" and must not be organized or operated for the benefit of private interests. Although established as a not-for-profit organization, during OIG's audit, the Foundation was delinquent in its filings with the District of Columbia's Department of Consumer and Regulatory Affairs. For example, the Foundation had not filed its Biannual Compliance Reports, which were due on April 1, 2012, and April 1, 2014, and had not paid its fees associated with its required filing of the compliance reports.

<sup>38</sup> These RFA employees work for the Foundation on a voluntary basis.

<sup>39</sup> According to an RFA official, the RFA address was used because the Foundation was registered in Washington, D.C., and none of the Foundation volunteers lived in Washington, D.C.

<sup>40</sup> OMB Circular A-122, att. B (item 12).

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research grants to 10.5 percent, which is the overhead rate charged by Berkeley for research gifts. RFA officials indicated that since RFA did not gift the funds directly to Berkeley but through the Foundation, RFA complied with the OMB requirement. The RFA General Counsel also stated that she believed that the OMB guidance restricting the use of grant funds did not extend beyond the transfer of funds to the Foundation. Further, because the funds were transferred using a contract rather than a sub-grant award mechanism, she stated that the OMB guidance would not apply.

OIG disagrees with the conclusions reached by RFA officials that the gift of Federal funds was allowable. OMB guidance states that the provisions of the guidance,<sup>41</sup> including a requirement to comply with allowable cost principles contained in OMB Circular A-122,<sup>42</sup> shall be applied to subrecipients performing work under awards if the subrecipient is a non-profit organization. A subrecipient is defined as an entity that receives a subaward.<sup>43</sup> The OMB guidance states that a subaward means an award of financial assistance made by a recipient, which can be provided by any legal agreement, even if the agreement is called a contract.<sup>44</sup> Since the contract between RFA and the Foundation was not for the procurement of goods and services but instead provided financial assistance, OIG considers the amount provided to the Foundation to be a subaward. As noted, OMB Circular A-122 prohibits the use of Federal grant funds for donations or contributions.<sup>45</sup> Therefore, RFA should have ensured that its subrecipient did not use Federal funds as a gift.

Berkeley used the \$1.2 million in funds provided by the Foundation for the purposes originally intended. But because the Foundation elected to provide the \$1.2 million as an unrestricted gift, the funds could have been reallocated to other purposes with no recourse for RFA.

**Conflict-of-Interest Policy for Radio Free Asia Employees.** RFA's conflict-of-interest policy requires employees to take "scrupulous care to avoid any action or relationship, whether inside or outside the workplace, and whether or not specifically prohibited by an RFA policy or procedure, which results in or is reasonably likely to create the appearance of:

- Losing independence, impartiality, or honesty;
- Using their status with RFA to promote personal interest or gain;
- Giving inappropriately preferential treatment to any person;
- Impeding the Company's efficiency or economy;
- Making a decision on behalf of RFA outside of Company-sanctioned channels; or
- Undermining the confidence of the public in the integrity of the Company."

Violation of the policy, "including the failure to report existing or prospective activities or relationships that constitute or create the appearance of a conflict of interest," could result in disciplinary action, such as termination of employment.

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<sup>41</sup> 22 CFR pt. 518.5.

<sup>42</sup> 22 CFR pt. 518.27.

<sup>43</sup> 22 CFR pt. 518.2(gg).

<sup>44</sup> 22 CFR pt. 518.2(ff).

<sup>45</sup> OMB Circular A-122, att. B (item 12).

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Two of the four RFA employees who OIG found had some affiliation with organizations that were awarded contracts during FYs 2012 and 2013 did not comply with RFA's conflict-of-interest guidance. Specifically, one employee did not include, in a 2012 conflict-of-interest document, the relationship the employee had with the New America Foundation. The other employee disclosed, in the conflict-of-interest document, that the employee provided "programmatically advice and information to the Freedom2Connect Foundation."

### **Radio Free Asia Did Not Comply With Conflict of Interest Requirements for its Agents**

OIG also found that RFA did not comply with OMB conflict-of-interest requirements for some RFA agents, specifically, members of RFA's Advisory Council. RFA awarded 30 OTF contracts for projects during FYs 2012 and 2013.<sup>46</sup> Prior to awarding the contracts, RFA used an Advisory Council to evaluate the project proposals for technical viability and to determine whether the projects supported OTF objectives. According to the OTF website, the 19 Advisory Council members were not RFA employees but were experts in privacy and security technology who had "volunteered their service in their respective personal capacity." The members came from different backgrounds, such as working at universities, foundations, and private companies. The Advisory Council's role was to provide formal evaluations of the proposals that it reviewed. The members could either recommend the proposals for contract award or provide feedback on their concerns about the proposals as written.

OIG reviewed the 30 OTF project-related contracts and identified 14 contracts, totaling \$4.0 million, with organizations that had some affiliation with 7 of the 19 members of the Advisory Council. For example, one Advisory Council member is a founder of one of the organizations that received OTF funding. Additionally, five other Advisory Council members are employees of organizations that were awarded contracts. These 14 projects represented 51 percent of the total amount (about \$7.8 million) of OTF project contracts for FYs 2012 and 2013. Table 2 provides information on the organizations and the number and dollar amount of the contracts awarded.

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<sup>46</sup> RFA funded 47 contracts using OTF funds during FYs 2012 and 2013. However, 17 of the contracts related to security audits or service contracts, which were not reviewed by the Advisory Council. Therefore, for the purposes of this section, OIG considered only the 30 contracts that related to OTF projects.

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**Table 2. Organizations Affiliated With Advisory Council Members Who Received OTF Funding**

<b>Organization</b>	<b>Number of Contracts Awarded</b>	<b>Amount of Contracts Awarded</b>
University of California-Berkeley*	2	\$1,200,000
Thinkst	1	130,000
SecondMuse	1	162,410
New America Foundation	5	1,411,800
Whisper Systems	5	1,133,862
Totals	14	\$4,038,072

\*These two contracts were not awarded directly to Berkeley by RFA. Instead, they were awarded to another not-for-profit organization, which then gifted the funds to Berkeley. Additional information on this not-for-profit is provided in the section “Freedom2Connect Foundation” of this report.

Source: OIG developed based on a review of the OTF website and OTF contracts.

RFA requires Advisory Council members to sign annually the “RFA Open Technology Fund Advisory Council Conflict of Interests Policy and Non Disclosure Agreement.” The purpose of the policy is to protect RFA’s interests when RFA is contemplating entering into a transaction being reviewed by the Advisory Council that might benefit the private interests of an Advisory Council member. The policy is also intended to identify “independent” Advisory Council members. In addition to the annual document, each Advisory Council member is required to complete an “Advisory Council Member Conflict of Interests Disclosure Form” prior to evaluating a proposal. This disclosure form requires Advisory Council members to identify any relationship, transactions, or positions held that may create a conflict of interest between RFA and the Advisory Council member’s personal or financial interests.

To determine whether the Advisory Council members signed both documents, OIG obtained and reviewed conflict-of-interest documentation for five<sup>47</sup> of 30 project-related contracts. OIG found that none of the five contract files included complete conflict-of-interest documentation. For example, for four of five contracts, only one Advisory Council member signed the annual conflict-of-interest disclosure form. Further, not all Advisory Council members signed the additional project-specific disclosure form required before evaluating a proposal for any of the contracts reviewed. A summary of compliance with RFA’s Advisory Council conflict-of-interest policy for the five contracts is shown in Table 3.

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<sup>47</sup> OIG selected six contracts for procurement review. However, two of those contracts were awarded to the same organization for a project with work that would be performed in FYs 2012 and 2013. The Advisory Council reviewed the proposal only once because the proposal submitted for its review was for both years. Thus, instead of six proposals for Advisory Council review, there were five.

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**Table 3. Summary of Compliance With RFA’s Advisory Council Conflict-of-Interest Policy**

	<b>Contract 1</b>	<b>Contract 2</b>	<b>Contract 3</b>	<b>Contract 4</b>	<b>Contract 5</b>
Number of Advisory Council members who reviewed the proposal	3	4	3	2	5
Number of Advisory Council members who signed the annual conflict-of-interest disclosure	1	1	1	1	5
Number of Advisory Council members who signed the project-specific conflict-of-interest disclosure	1	0	0	1	3

Source: Prepared by OIG based on the results of testing.

The reason that none of the five contract files we examined had complete conflict-of-interest documentation was, in part, because RFA did not have a process in place to ensure that Advisory Council members completed the two types of conflict-of-interest disclosure forms. We reviewed the list of Advisory Council members who evaluated projects. According to documentation provided by RFA, none of the Advisory Council members evaluated proposals for organizations with which they were affiliated. However, the number and dollar amounts of the contracts that were awarded to organizations affiliated with Advisory Council members created the appearance of potential conflicts of interest.

**Radio Free Asia Did Not Comply With Other Federal Procurement Requirements for Grantees**

In addition to conflict-of-interest requirements, OMB mandates that grantees comply with other procurement requirements, including the following:

- Competing procurement transactions to the maximum extent practical.<sup>48</sup>
- Justifying the lack of competition for contracts that are sole sourced.<sup>49</sup>
- Developing independent cost estimates.<sup>50</sup>
- Performing cost or price analyses.<sup>51</sup>
- Maintaining a system of contract administration.<sup>52</sup>

Further, grantees are required to maintain contract files that contain documentation supporting RFA’s compliance with these requirements.

<sup>48</sup> 22 CFR pt. 518.43, “Competition.”

<sup>49</sup> 22 CFR pt. 518.46, “Procurement records.”

<sup>50</sup> 22 CFR pt. 518.44, “Procurement procedures.”

<sup>51</sup> 22 CFR pt. 518.45, “Cost and price analysis.”

<sup>52</sup> 22 CFR pt. 518.47, “Contract administration.”

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OIG tested six RFA contracts,<sup>53</sup> totaling about \$4.0 million, related to the OTF program to determine whether RFA complied with certain procurement requirements.<sup>54</sup> OIG found that RFA did not comply with certain procurement requirements for any of the contracts tested. Table 4 provides the results of testing.

**Table 4. Compliance with Federal Procurement Requirements**

	<b>Contract 1</b>	<b>Contract 2</b>	<b>Contract 3</b>	<b>Contract 4</b>	<b>Contract 5</b>	<b>Contract 6</b>
Contract Was Completed	No	No	No	No	No	No
Sole-Source Justification Provided	Yes	Yes	Yes	No	Yes	No
Independent Cost Estimate Developed	No	No	No	No	No	No
Cost or Price Analysis Performed	No	No	No	No	No	No
Evidence of Contract Administration	Yes	Yes	Yes	Yes	Yes	Yes

Source: Prepared by OIG based on testing six RFA contracts.

**Insufficient Competition.** None of the six contracts tested were competed, meaning that all were issued using a sole-source<sup>55</sup> award. Further, according to RFA officials, RFA chose to issue all 47 OTF procurements during FYs 2012 and 2013 as sole-source awards. RFA officials stated that RFA did not complete the OTF procurements because of the “unique nature of the work” that OTF requires. RFA officials further explained that OTF projects are concepts or ideas that individuals or organizations develop, and according to RFA officials, these individuals or organizations wanted assurance that their ideas would not be taken by others. However, OIG reviewed the 47 OTF contracts and identified 17 that were awarded for services. OIG concluded that these 17 service contracts were neither “unique” nor would inherently expose concepts or ideas if the procurements were competed. Specifically, these contracts, which again were awarded by RFA using a sole-source award, included five contracts, totaling about \$79,000, to develop the OTF website. Another two contracts, totaling \$200,000, were awarded for translating software, websites, documentation, and other information into foreign languages. An additional six contracts, totaling \$563,000, were awarded for security audits. Three contracts, totaling approximately \$34,000, were for event planning and event facilitation. Finally, one contract, for \$275,000, was for a research study to map the digital environment in a specific country.

**Insufficient Sole Source Documentation.** RFA did not maintain sufficient documentation to support the decision not to compete the procurements. Although it may have

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<sup>53</sup> Two contracts were awarded based on the same proposal. Specifically, the proposal included work to be performed during two separate years.

<sup>54</sup> The section “Detailed Testing Methodology” in Appendix A provides information on how the contracts were selected for this audit.

<sup>55</sup> Sole-source acquisition means a contract for the purchase of supplies or services that is entered into after soliciting and negotiating with only one source. According to the Federal Acquisition Regulation (sbpt. 6.302, “Circumstances permitting other than full and open competition”), some of the circumstances permitting other than full and open competition include the following; only one responsible source is available, unusual or compelling urgency, or national security.

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been appropriate for RFA to award the six contracts tested without competition, it was difficult to determine because of the insufficient sole-source justifications. Two of six contracts did not have sole-source justifications in the file. One contract awarded in FY 2013 was based on a proposal submitted in FY 2012 for a 2-year project.<sup>56</sup> According to RFA officials, the FY 2013 contract did not need a sole-source justification because the justification used for the FY 2012 contract also applied to the FY 2013 contract. The second contract without a sole-source justification was also awarded in FY 2013. The RFA President provided OIG a blanket sole-source justification, prepared in April 2012, as a justification for sole-source contracts. The blanket justification provided several general reasons for using the sole-source procurement method, such as project efficiency, expedited timetables, and “nimble funding structure.” OIG concluded that the blanket justification was not sufficient because it did not provide details on why specific projects were awarded without competition.

The remaining four of the six contracts tested had justifications in the contract file. RFA provided hand-written memoranda to justify the lack of competition for the four contracts. The justifications for two contracts stated that the work would “complement the project work funded by the State Department to complete the project life cycle.” RFA sole sourced the other two contracts because the individuals hired to work on the projects were the ones who originally developed the projects.

OMB guidance to grantees requires that justification for sole-source contracts be documented; it does not provide details on the type of information that must be included in the justification. Although grantees are not required to comply with the Federal Acquisition Regulation, the regulation provides information on what a justification for less than full and open competition should include.<sup>57</sup> Specifically, justifications should include such things as:

- A demonstration that the proposed contractor’s unique qualifications or the nature of the acquisition requires the use of a sole-source contract.
- A description of the market research conducted.
- A determination that the anticipated cost will be fair and reasonable.
- Approval in writing by an appropriate official.

Based on this guidance, OIG concluded that the limited information included in the justifications for the four OTF contracts was insufficient. The justifications did not include details to demonstrate that the sole-source award was appropriate or that the vendor chosen would provide the expected services at a fair and reasonable rate. Further, the justifications were not signed by an approving official, although RFA’s President stated that she personally prepared the documents.

**Lack of Independent Cost Estimates.** RFA did not develop independent cost estimates for any of the six contracts tested. According to RFA officials, a formal cost estimate was not

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<sup>56</sup> RFA awarded two contracts to the same organization, giving the organization \$600,000 in FY 2012 and another \$600,000 in FY 2013, for a total of \$1.2 million.

<sup>57</sup> Federal Acquisition Regulation, sbpt. 6.303-2, “Content.”

needed because OTF staff has knowledge about the work involved and know what the costs of each project should be.

**Lack of Cost or Price Analysis.** RFA was unable to show evidence that it performed cost or price analyses for any of the six contracts tested. According to an RFA official, a formal cost or price analysis was not needed because OTF officials negotiate and significantly reduce the amount of the proposals before final award. OIG reviewed the original cost proposals for the six contracts and their final awards and did not identify significant reductions. For example, one contract's proposed cost was \$1 million, which was the awarded amount. Another contract was awarded for \$991,750, which was a reduction of only \$5,400 (less than 1 percent) from the original proposal amount.

**Some Contract Administration Performed.** After contracts are awarded, grantees must maintain a system of contract administration to ensure conformance with the terms and conditions of the contract. OIG found evidence in the contract files that OTF staff performed some contract administration tasks to monitor its contractors and ensure that the work performed met the conditions of the contracts. For example, the contract files for the six contracts tested contained emails from vendors communicating the progress of their work, notes of telephone calls, written status updates, and periodic reports.

Although OIG found evidence in the contract files of some contract monitoring, the monitoring process did not always ensure that contractual deadlines were met. OIG identified 4 of 47 OTF contracts where deadlines were not met, and RFA did not take action to either extend the deadlines or require the contractor to comply with the contract. RFA officials were not aware that these deadlines were missed until OIG brought it to their attention. An RFA official stated that contract extensions were not initiated because a project manager position was temporarily vacant.

### **Radio Free Asia Did Not Comply With its Internal Procurement Process**

RFA developed written procurement procedures for certain types of procurement activities, such as using consultants and purchasing services and goods. However, the procedures did not address OTF procurements. RFA posted the OTF contract award process on the OTF website. The process begins when an interested party submits a concept note or proposal through the OTF website.<sup>58</sup> OTF staff work with organizations that submit ideas to develop a sufficient proposal for projects that the OTF staff believe are viable and relate to the program.

Once approved by OTF staff, OTF submits the proposals to the Advisory Council for review and evaluation. Advisory Council members<sup>59</sup> review the proposals to determine whether they are technologically viable and financially sound and make recommendations for funding. The website did not indicate how many Advisory Council members must recommend a project

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<sup>58</sup> Although not specifically mentioned on the website, this process is used only for proposals for projects related to Internet or mobile device programs. Internally determined service-type contracts, such as for the development of the OTF website, are not put through this process.

<sup>59</sup> At the time of the audit, the Advisory Council consisted of 19 members; prior to 2013, the Council consisted of 7 members.

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before it goes forward in the process. According to one official, for FYs 2012 and 2013, OTF considered two Advisory Council member recommendations sufficient. Another RFA official stated that in FY 2012, three Advisory Council members approved a proposal before the proposal could go forward, while five to six Advisory Council members were needed in FY 2013.

Proposals with recommendations for funding from both OTF staff and the Advisory Council are then reviewed by RFA’s executive, legal, and financial departments before contracts are awarded. According to the OTF website, contracts are awarded for final proposals determined to be a “high priority, technically feasible, and legally and fiscally compliant.”

OIG reviewed the proposals related to six RFA OTF contracts,<sup>60</sup> totaling about \$4.0 million, to determine whether RFA complied with the process described on its website.<sup>61</sup> OIG found that none of the six proposals complied with all of the procurement requirements. Table 5 provides the results of the testing.

**Table 5. Compliance With Radio Free Asia Procurement Process**

	<b>Contract 1</b>	<b>Contract 2</b>	<b>Contract 3</b>	<b>Contract 4</b>	<b>Contract 5</b>	<b>Contract 6</b>
Sufficient Number of Advisory Council Members Reviewed the Proposal*	Yes	Yes	Yes	Yes	Yes	Yes
Sufficient Number of Advisory Council Members Recommended the Proposal	No	No	No	No	No	Yes
Evidence the Proposal Was Reviewed by the Legal Department	No	Yes	Yes	Yes	No	Yes
Evidence the Proposal Was Reviewed by the Financial Department	Yes	Yes	Yes	Yes	Yes	Yes
Evidence the Proposal Was Reviewed by the Executive Department	No	No	No	No	No	No

\*OIG considered a review by two members to be acceptable.

Source: Prepared by OIG based on the results of testing

<sup>60</sup> Two of the contracts were for the same project. However, the contracts were awarded for work in two separate years.

<sup>61</sup> The section “Detailed Testing Methodology” in Appendix A provides information on how the contracts were selected for this audit.

### **Advisory Council Members Review**

Because RFA did not have a policy on the number of Advisory Council members who needed to review a proposal before it could go forward, OIG considered a review by two members to be acceptable, which was the fewest number of members allowed, according to one RFA official. All six proposals were reviewed by at least two Advisory Council members before award.

### **Advisory Council Members Recommendation**

Five of six proposals were not recommended by at least two Advisory Council members. In some cases, the Advisory Council members had questions and concerns about the proposals. For example, three Advisory Council members who reviewed one proposal identified a number of concerns, including the need for additional project details and specific cost information. One Council member stated that the proposal was “vague for the amount of money they were asking for.” For another proposal, one Advisory Council member stated that “this is a big, unfocused project. ... For a million bucks, I expect more detail.” RFA awarded contracts for both proposals despite the concerns raised by the Advisory Council members.

Contrary to the process information on the website, an RFA official stated that Advisory Council members do not have to recommend a project before it moves forward. If members make negative comments about the project, OTF staff will adjust the proposal to address the concerns. When OTF staff believe they have addressed all of the Advisory Council members’ concerns, the proposals are forwarded for further processing without asking for further Council member review or feedback.

### **Legal and Financial Reviews**

Documentation in the form of emails showed that four of the six proposals were reviewed by the General Counsel. RFA officials stated that the General Counsel reviewed all proposals, but RFA lacked the documentation. All six proposals were reviewed by the Budget Director.

### **Executive Review**

Although the President stated that she approved sole source justifications for these projects, RFA did not provide documentation demonstrating that the RFA President had approved any of the six contracts tested before the contracts were awarded.

### **Radio Free Asia Did Not Have Detailed Procurement Policies and Procedures for Open Technology Fund Projects**

RFA did not comply with Federal procurement requirements for grantees or with its own internal OTF contract award process because RFA did not have detailed OTF procurement policies and procedures. In addition, RFA staff were not familiar with Federal procurement requirements and were not trained in contract procedures, such as developing cost estimates and

price analyses. Additionally, RFA did not have detailed internal control procedures for OTF contracts, such as the number of Advisory Council members needed to approve a proposal or requirements for documenting executive approval of a proposal. Further, RFA did not have procedures in place to monitor the OTF procurement process to ensure that it was followed. RFA officials stated that the procedures currently in place are sufficient and are followed.

### **Process Used To Select Projects Needs Improvement**

Based on the concerns that OIG identified with the appearance of conflicts of interest with both RFA officials and the Advisory Council members, as well as instances of noncompliance with other procurement requirements and its own procurement process, OIG concluded that BBG and RFA should reconsider RFA's process for evaluating and selecting OTF projects. At the time of this audit, a BBG Special Committee on Internet Anti-Censorship was developing objectives for the Internet Anti-Censorship Program and processes for using Internet anti-censorship funds. For instance, the Special Committee on Internet Anti-Censorship planned to establish a process to oversee the use of the funds and measure program achievements. The Committee proposed establishing a new BBG Program Office that would be staffed with full-time BBG employees. The office would provide oversight for all Internet anti-circumvention activities funded by BBG, both directly and indirectly.

In addition, the Special Committee on Internet Anti-Censorship proposed a pre-award review, analysis of performance, and an assessment of results. The pre-award review would require BBG, grantees, and sub-recipients to "engage in a robust review of applications in order to reduce the risk of money being wasted or projects not achieving the intended results." During a meeting on the Committee's findings, the President of RFA disagreed with the Committee's proposal, stating that the new program office should be responsible only for projects funded directly by BBG, not projects funded indirectly by BBG through RFA. The BBG Board of Governors did not make a decision on the Committee's proposal at this meeting. However, based on the findings identified by OIG and presented in this report, it is essential for BBG to reassess the methodology used by RFA to select projects for funding.

During a meeting with OIG, RFA's legal counsel stated that BBG would violate the law<sup>62</sup> if BBG asked RFA to participate in a joint process to select projects to fund using Internet anti-circumvention funds. Specifically, the law states that an executive agency should use a grant agreement when substantial involvement is not expected between the executive agency and the recipient when carrying out the activity. OIG does not agree that asking RFA to participate in a joint process to select projects to be funded would violate law or regulation.<sup>63</sup> The law does not prohibit substantial involvement, nor does it define either the specific term "substantial involvement" or detail what might constitute substantial involvement by the agency. Moreover, the mere selection of projects to fund does not entail prescribing how the projects are to be carried out. Additionally, BBG's participation in the selection of projects to fund would not be infringing on RFA's regulatory responsibility to conduct its own source evaluations. Regardless, since OIG is suggesting that RFA (as well as BBG) participate in the selection process, OIG

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<sup>62</sup> 31 U.S.C. § 6304.

<sup>63</sup> 22 CFR 518.41 and 2 CFR 200.318(k).

concluded that RFA's participation would mitigate as a precautionary safeguard against BBG getting substantially involved in carrying out the activity contemplated in the grant agreement and would comply with a reasonable construction of the statutory language and requirements.

### **Projects May Have Cost More Than Necessary**

Because RFA did not comply with Federal procurement requirements, there is no assurance that RFA received fair value for OTF contracts. Since RFA did not sufficiently compete the OTF projects, there was no assurance that other parties might not have been able to do the projects more efficiently or at a better price. Without independent cost estimates, RFA could not compare the proposed prices with independent estimates and determine whether the proposed prices were reasonable. Since RFA did not perform formal cost or price analyses, there was no assurance that the individual cost elements charged to RFA were reasonable and allowable. Furthermore, without sufficient oversight, there was no assurance that the work paid for was completed timely and in accordance with the contract. In addition, formal written internal procurement processes would assist RFA in ensuring that its employees procured items in compliance with Federal guidelines.

According to RFA, the Advisory Council review process "greatly expands OTF's project oversight capacity, expertise, perspective, and accountability." It also helps OTF avoid "unintentional duplication of efforts, provide independent verification of programmatic assessments, and identify strategic parallels in complementary fields." The Advisory Council review process was developed so that OTF could take full advantage of the members' expertise in the technical and practical aspects of privacy and security technology. However, OIG found that RFA had not received a significant amount of feedback from Council members on proposals and did not necessarily rely on the Council members' evaluations when they were received. Effectively, the RFA officials responsible for OTF projects made the decisions on which proposals to fund with little oversight or control.

**Recommendation 9.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia to develop and implement supplemental procurement policies and procedures for Open Technology Fund procurements that comply with Federal procurement requirements for grantees.

**BBG Response:** BBG concurred with the recommendation, stating that the Board "will condition any further grant of" Internet anti-censorship "funding to RFA on RFA's development and implementation of such policies and procedures, consistent with BBG guidance."

**RFA Response:** RFA concurred with the recommendation, stating that it had "a Procurement Policy that is followed for all purchases." RFA acknowledged that "there were some departures from its procurement procedures and Office of Management and Budget requirements applicable at the time." However, RFA stated that it believes that those departures were "primarily matters of insufficient documentation rather than substantive ones." In response to the recommendation, RFA stated that it will "immediately initiate a review of its procurement procedures affecting all of its activities,

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including OTF, and supplement them particularly in light of the recent issuance by the Office of Management and Budget (OMB) of *Uniform Administrative Requirements, Cost Principles and Audit Requirements*.” RFA further stated that it planned to fully assess the “procurement standards contained in that policy guidance” and appropriately incorporate the information in RFA’s procurement policy. RFA also stated that it planned to ensure that “competition is conducted to the extent practical.” Further, RFA stated, “Appropriate cost or price analysis will be conducted and contract administration procedures to assure contractor compliance and performance will be adopted.”

**OIG Reply:** While OIG agrees that RFA has a procurement policy, that procurement policy was not used for OTF procurements. RFA included the OTF contract award process on the OTF website. That contract award process was different than the information included in RFA’s general procurement policy. OIG confirmed that the process was different with RFA officials during the audit. OIG also disagrees with RFA’s assertion that RFA’s departures from OMB guidance and its own policy were not substantial. OIG identified significant noncompliance with Federal requirements related to competition; cost and price analyses; conflict of interest; and, to a lesser degree, contract administration. RFA’s significant noncompliance makes it difficult to ensure that RFA used resources it received from the Government in a cost-effective manner.

Based on BBG concurrence, OIG considers the recommendation resolved. OIG will close this recommendation when OIG receives and accepts documentation showing that BBG has required RFA to develop and implement supplemental procurement policies and procedures for OTF procurements that comply with Federal requirements.

**Recommendation 10.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia (RFA) to develop and implement a training plan that ensures that RFA employees involved in the Open Technology Fund procurement process understand the supplemental procurement policies developed in response to Recommendation 9.

**BBG Response:** BBG concurred with the recommendation, stating that the Board “will condition any further grant” of Internet anti-circumvention funding “to RFA on RFA’s development and implementation of such a training plan, consistent with BBG guidance.”

**RFA Response:** RFA concurred with the recommendation, stating that it will “initiate a training regimen for appropriate employees involved in organizational procurements, including those involved in the Open Technology Fund, to assure that they are aware of RFA’s current procurement procedures.” RFA also stated that it had already “obtained a web based training module” that “addresses and analyzes the underlying OMB requirements. The training module will be used as the first step in that process.”

**OIG Reply:** Based on BBG and RFA concurrence, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation showing that BBG has required RFA to develop and implement a training plan to ensure RFA procurement officials understand procurement requirements.

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**Recommendation 11.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia (RFA) to implement a process to monitor the Open Technology Fund procurement process to ensure compliance with RFA's procurement procedures.

**BBG Response:** BBG concurred with the recommendation, stating that the Board "will condition any further grant" of Internet anti-circumvention funding "to RFA on RFA's development and implementation of such a process, consistent with BBG guidance."

**RFA Response:** RFA concurred with the recommendation, stating that it "will conduct . . . monitoring of its procurement process through a self-audit of contracts" as well as through "the internal control review conducted by its external auditors." RFA further stated that any "deficiencies revealed through such monitoring will be addressed as appropriate."

**OIG Reply:** Based on BBG and RFA concurrence, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation showing that BBG has required RFA to develop and implement a process to monitor OTF procurements to ensure compliance with RFA procurement procedures.

**Recommendation 12.** OIG recommends that the Broadcasting Board of Governors direct Radio Free Asia (RFA) to ensure that employees and Advisory Council members comply with RFA's conflict-of-interest requirements.

**BBG Response:** BBG concurred with the recommendation, stating that the Board "will condition any further grant" of Internet Anti-Censorship "funding to RFA on RFA's development and implementation of compliance with these requirements, subject to BBG oversight."

**RFA Response:** RFA concurred with the recommendation, stating that it "will continue to enforce its Conflict of Interests policy through an awareness memorandum to employees, officers, and agents and will incorporate specific subject training into the broader procurement training."

**OIG Reply:** Based on BBG and RFA concurrence, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation showing that BBG has directed RFA to ensure that employees and Advisory Council members comply with RFA's conflict-of-interest requirements.

**Recommendation 13.** OIG recommends that the Broadcasting Board of Governors (BBG) develop and implement a process to select Open Technology Fund projects that Radio Free Asia (RFA) will fund. Both BBG and RFA officials should be involved in the selection process.

**BBG Response:** BBG concurred with the recommendation, stating that it is "drafting policies and procedures designed to provide oversight for the use of all Internet Anti-Censorship funds." BBG further stated that the policy "will include language indicating

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that both BBG and RFA officials will participate in the project selection process.” BBG has already “engaged in discussions with the RFA President to ensure that Agency officials, well versed in all areas of Information Technology . . . represent the Agency as members of the OTF Advisory Panel.” According to BBG, several BBG officials will participate as “voting members of the OTF Advisory Panel.”

**RFA Response:** RFA did not concur with the recommendation but concurred with BBG’s response to the recommendation. RFA disagreed with how the recommendation was written” in that OMB procurement standards provide that “[t]he recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered in support of an award or other agreement. This includes disputes, claims, protests, **source evaluation** (emphasis added) or other matters of a contractual nature.” RFA believes that “its purpose is to recognize privity of agreement and the fact that the Federal awarding agency is not a party to procurement contracts under grants.”

“Second, if substantial federal involvement in the recipient’s procurement process is anticipated, the Federal awarding agency is required by the Federal Grant and Cooperative Agreement Act . . . to issue a cooperative agreement in which that substantial involvement is specified.” RFA “suggests that the OIG’s recommendation could give rise to the possibility that BBG would be viewed as using an intermediary to carry out activities that it might be precluded from undertaking directly.”

“It should be noted that RFA reviews all potential projects with the Director of Global Operations/Acting CFO and presents a list of potential projects to be funded during the annual Operating Plan submission process.”

**OIG Reply:** Based on BBG concurrence, OIG considers the recommendation resolved. Because of the concerns identified during the audit with the selection of OTF projects (such as noncompliance with procurement requirements and the appearance of conflicts of interest), OIG concluded that it was important for BBG to assess the process used by RFA to select projects and to ensure that RFA met BBG’s expectations. OIG does not agree that asking RFA to participate in a joint process with BBG to select projects to be funded would violate the laws cited by RFA. It is ultimately BBG’s decision on how best to accomplish the intent of the recommendation. BBG’s planned participation on the Advisory Council is sufficient to resolve this recommendation. The recommendation can be closed when OIG receives and accepts documentation showing that BBG has implemented a process to increase its participation in the selection of projects to be funded by OTF.

## **Finding D. Radio Free Asia Did Not Return Unneeded Funds to the Broadcasting Board of Governors**

OIG found that RFA did not return all unused unobligated funds to BBG at the end of FY 2013 as required by the grant agreement. Specifically, OIG identified funds of \$583,583 that were no longer needed but were not returned to BBG. RFA did not return unused funds because

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RFA’s practice was to keep funds received from BBG for 5 years and at the end of the 5-year period request permission to use the unused funds for other purposes. According to an RFA official, BBG never informed RFA that this practice was not allowed. Further, RFA did not have an effective process to regularly review unused funds to determine whether the funds were still needed. In addition, BBG did not have a process in place to oversee RFA’s unused funds annually and ensure that funds not needed in the current fiscal year were either returned or used for another allowable purpose. As a result of the insufficient control over funds, OIG identified questioned costs of \$583,583.

**Some Unused Funds Were No Longer Needed by RFA**

RFA’s grant agreement with BBG stated that RFA “shall return to BBG at the conclusion of the fiscal year any portion of the grant funds that are not required for a legally binding transaction or designated by RFA for a purpose and in an amount consistent with the approved financial plan (as well as any recoveries or carryover balances from prior years), unless otherwise approved by BBG.”

According to its financial statements, as of September 30, 2013, RFA maintained unused funds of \$5.1 million from FY 2013 and prior years, all of which were provided by BBG. RFA officials stated that these unused funds consisted of commitments and prior year unexpended funds. Table 6 provides the amount of RFA’s unused funds by fiscal year as of September 30, 2013.

**Table 6. Total Unused Funds as of September 30, 2013**

<b>Fiscal Year</b>	<b>Commitments</b>	<b>Unexpended Funds</b>	<b>Total Amount of Unused Funds</b>
2007	\$0	\$87,352	\$87,352
2008	0	135,471	135,471
2009	0	82,135	82,135
2010	0	90,889	90,889
2011	0	6,237	6,237
2012	1,262,847	72,296	1,335,143
2013	3,375,578	0	3,375,578
<b>Totals</b>	<b>\$4,638,425</b>	<b>\$474,380</b>	<b>\$5,112,805</b>

Source: RFA’s FY 2013 financial statements.

RFA officials stated that all of the unused funds were needed for valid purposes and that therefore the funds did not need to be returned to BBG. Specifically, of the unused funds of \$5.1 million, funds of \$4,638,425 represented commitments for contracts, purchase orders, or work orders that were issued but for which goods or services were not received by RFA as of the end of the fiscal year. For example, RFA issued 12 contracts, totaling \$1.7 million, on September 30, 2013, and committed funds to make future payments on these contracts. RFA did not receive goods or services from these contracts and did not make payments to the contractors prior to the end of FY 2013. The remaining unexpended funds, which totaled \$474,380, were unspent. RFA preferred to keep the unspent funds until it determined that no additional invoices would be submitted by the vendor.

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OIG assessed the validity<sup>64</sup> of the commitments and identified six commitments, valued at \$186,236 (4 percent), that were no longer needed. The amounts of the valid and invalid commitments from FYs 2012 and 2013 are provided in Table 7.

**Table 7. Invalid Commitments Identified by OIG**

<b>Fiscal Year</b>	<b>Amount Tested</b>	<b>Valid Commitments</b>	<b>Invalid Commitments</b>
2012	\$1,262,847	\$1,107,106	\$155,741
2013	3,375,578	3,345,083	30,495
Totals	\$4,638,425	\$4,452,189	\$186,236

Source: OIG prepared based on testing.

Of the six unneeded commitments identified, the following information is provided:

- One commitment, totaling \$30,000, was considered invalid because it was not in compliance with Federal regulations. RFA obligated the funds without a legally binding transaction or for a specific purpose. RFA used the commitment as a “place holder” in case additional unplanned items were needed. Federal regulations prohibit grantees from using grant funds for contingency purposes.<sup>65</sup>
- One commitment, with a remaining balance of \$150,000, had expired. Specifically, on April 25, 2012, RFA obligated \$300,000 for a project with four deliverables that were to be provided by October 1, 2012. As of the deliverable date, RFA received one deliverable, for which it paid the contractor \$75,000. On October 15, 2012, RFA extended the completion date for the other three deliverables to April 30, 2013. RFA received and paid the contractor \$75,000 for one additional deliverable. However, the contractor did not provide the remaining two deliverables. RFA officials stated that RFA did not anticipate receiving the remaining two deliverables and that the balance of \$150,000 would not be used for that purpose.
- Four commitments, totaling \$6,236, were considered invalid because there was no activity for more than 6 months. For example, on September 19, 2012, RFA obligated \$5,000 for a consultant to perform information technology security forensics testing. Although the purchase order was marked “urgent,” no work was done as of March 31, 2014, more than 17 months later.

In addition to the invalid commitments, RFA officials informed OIG that \$397,347 of the \$474,380 in unexpended funds was no longer needed. In fact, after OIG began audit fieldwork, RFA sent a memorandum to BBG requesting to use the funds for another purpose; specifically, to equip a new video studio with auxiliary equipment and furnishings.

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<sup>64</sup> OIG based its validity determination on three criteria: whether the item or service purchased was allowable according to 2 CFR pt. 230, “Cost Principles for Non-profits”; whether the date by which the good or service was to be received had occurred; and whether the account had some type of activity in the 6 months prior to the testing.

<sup>65</sup> OMB Circular A-122, att. B(9).

### **RFA and BBG Did Not Have Sufficient Controls Over Unused Funds**

RFA maintained a significant amount of unneeded funds that were not in compliance with the grant agreement because, according to RFA officials, RFA's practice was to keep the funds received from BBG for 5 years and, at the end of the 5-year period, RFA would request permission from BBG to use the remaining unused funds for other purposes. For example, in an email sent to BBG in June 2008, RFA requested that BBG allow RFA to use \$210,670 in unused funds from FY 2004 and FY 2005 for costs related to news coverage of the Olympics and the Cambodian national elections and for cyber-security consulting. BBG approved this request. According to an RFA official, BBG did not inform RFA that retaining the unused funds did not comply with the grant agreement. BBG's CFO was not familiar with RFA's 5-year rule but was aware that her predecessor approved carrying over unexpended grantee funds.

In addition, RFA did not have a sufficient process in place to regularly review its unexpended funds and open commitments to determine whether they were still needed. Although an RFA official provided documentation showing he ran monthly reports that identified the amount of unused funds, there was no evidence that RFA officials had assessed the amounts to determine whether they were still needed. Sound fund management requires regular reviews of obligations so that unneeded funds can be promptly used for other needs.

Further, BBG did not have a process to ensure that grantees returned unused funds or request that the funds be reprogrammed, as required by the grant agreement. Moreover, some BBG officials were unaware that there was a requirement for RFA to return unused funds annually. BBG's administrative manual<sup>66</sup> states that the Office of the CFO "shall require the recipient to promptly refund any balances of unobligated cash that has been advanced or paid that is not authorized to be retained by the recipient for use in other projects." To address the issue, BBG hired an external contractor to assess the amount of unused funds retained by its grantees and develop policies and procedures to monitor unused funds. Until a sufficient process is in place, BBG officials cannot make well-informed decisions as to whether funds should be reprogrammed by RFA or returned to BBG.

### **Funds Used for Questioned Costs Could Have Been Put to Better Use**

As a result of inadequate fund management, OIG questioned \$583,583 in costs. These funds could have been put to better use either by RFA or by BBG. Invalid commitments and unexpended funds affect RFA's ability to effectively manage its funds. In addition, because of RFA's practice to request approval to reprogram funds 5 years after the funds are received, RFA has become dependent on these monies to fund projects that were not originally in the financial plan. Because of inadequate oversight of the funding provided to RFA, BBG does not have an accurate understanding of the amount of funds that RFA needs to operate each fiscal year.

**Recommendation 14.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia to revise its processes to include an assessment of the continued

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<sup>66</sup> International Broadcasting Bureau Manual of Operations and Administration, ch. 7-600, "Grants and Other Financial Assistance."

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need for funds that are either unexpended or committed and to take action to deobligate funds that are no longer needed.

**BBG Response:** BBG concurred with the recommendation, stating that it will “assess the grantees’ process for de-obligation of funds.” BBG further stated that it had drafted or revised templates “for use by grantees to identify unexpended or committed funds that are no longer needed and should be de-obligated.”

**RFA Response:** RFA concurred with the recommendation, stating that it “maintains a monthly record of unexpended funds by year.” RFA also suggested that the “presence of obligated but unexpended funds at the end of a grant award year is a common situation that arises in the context of federal awarding agency and recipient interaction. This is reinforced by the BBG practice of allowing Grantees to reprogram prior-year funds.”

**OIG Reply:** Based on BBG and RFA concurrence, OIG considers the recommendation resolved. RFA provided, and OIG reviewed, RFA’s monthly record of unexpended funds during the audit. While the document may be a useful tool for RFA to track its various accounts, there is no evidence that RFA officials reviewed the information in the spreadsheet to assess the current need for the unexpended funds. RFA’s fund management process is not sufficient considering that OIG identified unexpended funds of \$397,347 that were no longer needed dating back to FY 2007. Moreover, when OIG brought this to the attention of RFA, RFA immediately requested permission from BBG to reprogram the funds. While OIG agrees that it is possible to have valid obligations remain open in future fiscal years, it is important for an organization to have a process in place to periodically assess open obligations for continued need and to take appropriate actions when obligations are no longer needed.

The recommendation can be closed when OIG receives and accepts documentation showing that BBG has required RFA to revise its funds management processes to include a consideration of the continued need for funds that are either unexpended or committed and to take action to deobligate funds that are no longer needed.

**Recommendation 15.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia to annually report on the amount of unused funds.

**BBG Response:** BBG concurred with the recommendation, stating that it will require RFA “to annually report on the amount of unused funds.”

**RFA Response:** RFA concurred with the recommendation, stating that it will “provide a report of prior-year funds at the end of October each year when it submits the final fiscal year financial reports required by the Grant Agreement.”

**OIG Reply:** Based on BBG and RFA concurrence, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation showing that BBG has required RFA to annually report on the amount of unused funds.

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**Recommendation 16.** OIG recommends that the Broadcasting Board of Governors develop and implement a process to oversee Radio Free Asia's unused funds.

**BBG Response:** BBG concurred with the recommendation, stating that it will continue to work "to finalize the process for handling grantees' unused funds. These results will be incorporated into the Grant Monitoring Program."

**RFA Response:** RFA concurred with the recommendation.

**OIG Reply:** Based on BBG and RFA concurrence, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation showing that BBG has developed and implemented a process to oversee RFA unused funds.

**Recommendation 17.** OIG recommends that the Broadcasting Board of Governors make a formal determination on the \$583,583 in questioned costs related to unused funds at Radio Free Asia identified by OIG.

**BBG Response:** BBG concurred with the recommendation, stating that the Office of the Chief Financial Officer will "review the questioned cost related to unused funds and make related recommendations to the Interim Director."

**RFA Response:** RFA concurred with the recommendation, stating that of the "\$583,583 questioned by the OIG, BBG granted RFA permission to reprogram \$397,347 of this amount." RFA also stated that one commitment of \$150,000 had not expired as reported by OIG. RFA further stated that this "contract was amended on April 30, 2014" to extend "the time of performance through December 31, 2014, and the remaining two deliverables have been completed." RFA said that it plans to "monitor the remaining obligated amounts and when it is determined that any of those funds are no longer required for the original purpose, RFA will work with BBG to reprogram those funds."

**OIG Reply:** While BBG agreed with OIG's recommendation, BBG's response was not sufficient for OIG to consider the recommendation resolved because management did not provide a decision with respect to the validity of the \$583,583 in questioned costs OIG identified related to unused funds.<sup>67</sup>

RFA indicated that some of the questioned costs OIG identified were not invalid because the contractor provided the remaining deliverables for which RFA paid. During multiple meetings on the topic of unused funds, including the audit exit conference, RFA did not provide OIG documentation showing that the status of the identified unused funds had changed. Because OIG did not receive documentation showing that the funds were used appropriately, the amount of questioned costs presented in the recommendation, \$583,583, remains unchanged. RFA should provide BBG documentation related to these

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<sup>67</sup> Inspector General Act, as amended, Pub. L. No. 95-452 § 5(a)(8).

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funds to facilitate BBG's formal determination of the questioned costs related to unused funds.

This recommendation can be resolved when BBG provides a determination (dollar value agreed to or not agreed to) on the validity of the \$583,583 in questioned costs. This recommendation can be closed when OIG receives and accepts documentation showing that BBG took appropriate action related to the unused funds questioned by OIG, including the recovery of any costs determined to be disallowed.

**Finding E. Non-Personnel Expenditures Were Generally Allowable, but Some Personnel Costs May Be Unallowable**

OIG found that RFA generally used the grant funds provided by BBG in accordance with Federal regulations and the grant agreement. Specifically, of 199 non-personnel expenditures tested, amounting to \$1,673,537, OIG found that 194 expenditures, totaling \$1,656,505, complied with Federal regulations and the grant agreement. OIG identified \$1,740 in unallowable travel-related expenditures that occurred primarily because RFA's travel policy did not require that travelers obtain approval to exceed Federal per diem amounts. Additional travel-related expenditures of \$15,292 that otherwise would have been allowable were paid with funds that were not available for the purpose for which they were used, primarily because changes in funding were not made to reflect the changes in travel purposes. OIG also identified unallowable expenditures of \$19,737 for promotional items and unallowable expenditures of \$117 for charitable contributions that were specifically prohibited by Federal regulation. BBG approved the expenditures for promotional items without obtaining the required waiver from OMB, and one RFA field office made charitable contributions because the office was not aware that grant funds could not be used for charitable donations. RFA and BBG had taken actions to address the control deficiencies that resulted in these unallowable costs.

OIG also identified instances in which RFA's personnel-related costs were not in technical compliance with Federal law and grant requirements. Specifically, maximum annual salary levels for four of seven RFA positions reviewed were higher than the maximum annual salary levels of comparable BBG positions. In addition, 4 of 11 benefits reviewed exceeded the benefits provided to Federal employees. The noncompliance occurred primarily because the RFA benefits were required under a collective bargaining agreement.<sup>68</sup> In addition, BBG did not perform a recent comparability study of benefits and salaries, as required, which would have allowed BBG to better assess whether the aggregation of RFA's benefits exceeded benefits provided to Federal employees. As a result, some funds may have been spent on unallowable personnel costs that could have been put to better use.

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<sup>68</sup> According to RFA officials, BBG approved the collective bargaining agreement.

## **Most Non-Personnel Expenditures Complied With Federal Regulations and the Grant Agreement**

The grant agreement requires that the costs incurred by RFA comply with OMB guidance<sup>69</sup> and authorizes certain types of expenditures insofar as the costs are reasonable and necessary to further the purpose of the grant. For example, the grant agreement authorizes RFA to pay for the costs of foreign travel, but it prohibits RFA from paying for first-class travel for any employee.

### **Testing of Non-Personnel Expenditures**

To determine whether RFA's non-personnel expenditures complied with OMB guidance and the grant agreement, OIG tested the non-personnel expenditures.<sup>70</sup> Of 9,782 FY 2013 expenditures, totaling \$13,088,505, OIG tested 199 expenditures, totaling \$1,673,537, or almost 13.0 percent of the dollar value of the universe. OIG determined that 194, or 97.5 percent, of the 199 expenditures, totaling \$1,656,505 or 99.0 percent of total dollar value tested were allowable. OIG identified five travel-related expenditures, totaling \$17,032, that included unallowable costs. This amount represented 1.0 percent of the amount of all expenditures tested. Table 8 provides the results of OIG's sample of non-personnel expenditures.

**Table 8. Results of Testing of RFA Non-Personnel Expenditures**

<b>Expenditure Category</b>	<b>Number Sampled and Tested</b>	<b>Number of Allowable Items</b>	<b>Number of Items With Unallowable Costs</b>	<b>Amount Over Per Diem</b>	<b>Amount of Incorrect Funds Used</b>
Contract Services	68	68	0	\$0	\$0
Travel	44	39	5	1,740	15,292
Office Space	38	38	0	0	0
General and Administrative	34	34	0	0	0
Technical*	10	10	0	0	0
Capital Expenditures	5	5	0	0	0
Totals	199	194	5	\$1,740	\$15,292

\* Technical expenditures include technical equipment that cost less than \$5,000.

Source: OIG prepared based on the results of its testing.

Of the five unallowable travel-related expenditures, three expenditures included reimbursement for unallowable travel costs amounting to \$1,740 and are detailed as follows:

<sup>69</sup> The grant agreement requires RFA's costs to be in compliance with OMB A-122.

<sup>70</sup> The section "Detailed Testing Methodology" in Appendix A provides information on how the expenditures were selected for this audit.

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- Two of the three expenditures included reimbursement for hotel rooms at a rate higher than the maximum daily rate allowed by Federal regulation.<sup>71</sup> Federal regulation authorizes organizations to exceed the maximum allowable rate if it is approved by an officer of the organization “to ensure that the authority is properly administered and controlled to prevent abuse.” However, RFA’s travel policy did not include a requirement for approval.
- The third travel-related expenditure was unallowable because RFA mistakenly used the wrong per diem rate when calculating the traveler’s reimbursement.

After discussing these issues with RFA officials, RFA updated its travel policy to require prior approval when an employee’s travel plans included special or unusual circumstances that necessitated exceeding the maximum allowable daily lodging rate. RFA officials also collected the overpayment of per diem from the employee.

OIG also identified instances in which RFA used incorrect funds to pay for charges totaling \$15,292 related to three of the five unallowable expenditures.<sup>72</sup> Although the expenditures were allowable under Federal regulations, the expenditures were paid with funds that were not available for the purpose for which they were used. Specifically,

- Two expenditures for one trip were paid using programming/broadcasting funds, but the purpose of the travel was Internet anti-circumvention.
- One expenditure for a separate trip was paid from Internet anti-circumvention funds, but the purpose of the travel was programming/broadcasting.

The grant agreement states that RFA “may use the Grant Funds solely for planning and operating expenses related to international broadcasting and administration thereof” and that Internet anti-circumvention funding “is made available for costs associated with expanding unrestricted access to information on the Internet.”

RFA officials stated that the original purpose of one of the two trips was for programming/broadcasting purposes but that the trip evolved into an Internet anti-circumvention technology study. The officials agreed that it would have been more appropriate to prorate the trip between the two funds. For the second trip, only the airfare portion of the trip was paid from Internet anti-circumvention funds, while the remainder of the trip was paid from programming/broadcasting funds. In FY 2014, BBG began requiring that RFA detail all expenditures from the Internet anti-circumvention funding, which will help RFA identify the purpose of the expenditures and ensure that the appropriate funds are used. The new requirement should also help BBG ensure that grant funds are used for their appropriate purpose in the future.

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<sup>71</sup> 48 CFR pt. 31.205-46, “Travel Costs.”

<sup>72</sup> One of these expenditures also included unallowable travel costs. The portion of the expenditure that was unallowable was reported with the other unallowable costs.

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### **Analysis of Non-Personnel Expenditure Accounts**

In addition to testing a sample of non-personnel expenditures, OIG reviewed a listing of RFA's general ledger accounts and identified two accounts—"Promotional Items" and "Contributions"—that were specifically prohibited by Federal regulation.<sup>73</sup> Grantee funds may be used for promotional items or contributions but only if a waiver is obtained from OMB.

During FY 2013, RFA spent \$19,737 on promotional items. RFA officials stated that the promotional items included caps, t-shirts, coffee mugs, and other similar items that would be given to the general public as a marketing tool to "get RFA's name out there." RFA officials also stated that promotional items were included in the financial plan that was submitted to and approved by BBG. BBG officials stated that RFA faces challenges with name recognition. However, BBG did not obtain the necessary waiver from OMB for RFA to spend grant funds on promotional items. Without the required waiver, the expenditures of \$19,737 are unallowable costs.

RFA also spent \$117 on contributions. RFA officials stated that one of RFA's field offices made two contributions, totaling \$117, to a charitable organization. After OIG brought the expenditures to RFA's attention, RFA officials sent an email to all RFA field offices informing them that they could not use office funds to make donations to charitable organizations.

According to BBG officials, BBG did not have a process to determine whether grantee expenditures were made in compliance with OMB guidance but instead relied on the work performed by RFA's independent financial statement auditor. The independent auditor concluded that there were no reportable findings related to RFA's expenditures. Considering the small number and amount of the deficiencies identified, OIG concluded that it is reasonable for BBG to continue to rely on the testing performed by RFA's independent financial statement auditor.

### **Some Salaries and Benefits Did Not Comply With Federal Regulations or the Grant Agreement**

The grant agreement required that grant funds not be used to pay any salary or other compensation in excess of the rates established for comparable positions under Part III, Title 5, of the United States Code (Title 5). Title 5 governs the benefits and salaries provided to Federal employees. For example, Title 5 lists the number of annual leave days per year provided to Federal employees as well as the schedules of basic salary rates for Federal employees.

### **Comparison of Maximum Annual Salaries**

To determine whether RFA salaries were in compliance with Title 5, OIG compared the maximum annual salaries for seven RFA positions with the maximum annual salaries for similar

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<sup>73</sup> OMB Circular A-122, atts. B (1)(f)(3) and (12)(a).

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positions at BBG.<sup>74</sup> Of seven positions with comparable duties, only one RFA position was at a higher maximum annual salary level than its BBG counterpart. The maximum annual salary level for this RFA position exceeded the maximum annual salary level for the BBG position by only \$29.

However, RFA employees received a paid 1-hour lunch break each day, while Federal employees do not receive a paid lunch break. Therefore, RFA employees work 7 hours each work day, while BBG employees work an 8-hour work day. When the maximum annual salary levels are adjusted for this difference, RFA maximum annual salary levels for four positions exceeded the BBG maximum annual salary levels, as shown in Table 9.

**Table 9. Comparison of Maximum Annual Salaries Offered by RFA and BBG With Comparable Duties**

<b>Sample Number</b>	<b>RFA Maximum Annual Salary</b>	<b>BBG Maximum Annual Salary</b>	<b>Difference</b>	<b>Adjusted BBG Maximum Annual Salary</b>	<b>Difference</b>
S1-03	\$85,200	\$97,333	(\$12,133)	\$85,166	\$34
S3-02	72,500	97,333	(24,833)	85,166	(12,666)
S4-02	87,800	115,742	(27,942)	101,274	(13,474)
S4-05	96,500	111,930	(15,430)	97,939	(1,439)
S5-01	181,500	181,500	0	158,813	22,687
S5-02	181,500	181,500	0	158,813	22,687
S5-04	\$136,800	\$136,771	\$29	\$119,675	\$17,125

Source: OIG analysis based on RFA Employee Roster – Pay Bands, Office of Personnel Management – Salary Table 2013, and Department of State 2013 Foreign Service (FS) Salary Table – Overseas.

**Comparison of Benefits**

To determine whether RFA benefits were in compliance with Title 5, OIG compared 11 employment benefits—Medical, Dental, Vision, Holiday Leave, Sick Leave, Public Transportation Assistance, Retirement Contributions, Floating Personal Leave, Parental Leave, Annual Leave, and Basic Life Insurance— offered to RFA employees with similar benefits provided to Federal employees.

Of 11 benefits provided to RFA employees, 7 benefits were similar to or less than the benefits provided to Federal employees and were therefore in compliance with the grant agreement. Specifically, RFA’s medical, dental, and vision health insurance benefits and sick leave benefits were similar to Federal benefits. In addition, RFA’s paid holidays, public transportation assistance, and contributions to employees’ retirement plans were less than those provided to Federal employees. Although most of the RFA benefits complied with the requirements of the grant agreement, four benefits—floating personal leave, parental leave,

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<sup>74</sup> See Appendix A for details of the testing of salaries.

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annual leave, and basic life insurance—exceeded the benefits provided to Federal employees depending on years of service.

**Floating Personal Leave.** RFA offers two floating personal days to each employee each year in addition to the annual and sick leave provided. Unlike annual or sick leave, the floating personal days may not be carried over to the following calendar year, and there is no payment for unused floating days upon termination. There is no comparable leave provided to Federal employees by Title 5.

**Parental Leave.** RFA offers parental leave to its employees. Employees are allowed 3 days of paid leave within the first 30 days after the birth or adoption of a child. Similar to the floating personal leave, parental leave is in addition to the annual or sick leave RFA employees earn. Federal employees are not offered paid parental leave in Title 5. For the birth or adoption of a child, Federal employees may use annual or sick leave.

**Annual Leave.** Although the number of annual leave days earned per year increases over time for both RFA and Federal Government employees, the earned leave increases at a different rate for each entity. During the first 3 years of service, RFA employees receive 15 days of annual leave per year while Federal Government employees receive 13 days per year. During years 4 and 5 of employment, RFA employees continue to earn 15 days of annual leave per year while Federal Government employees' annual leave increases to 20 days per year. Both RFA and Federal Government employees earn 20 days of annual leave per year during years 6 to 10. During years 11 to 14 of employment, RFA employees receive 25 days of annual leave per year while Federal Government employees continue to earn 20 days per year. Starting at year 15 of employment, RFA employees earn 25 days of annual leave per year while Federal Government employees earn 26 days per year. OIG's analysis of annual leave earned indicates that RFA employees generally fare better over time than Federal Government employees.

**Basic Life Insurance.** RFA provides basic life insurance equivalent to two times an employee's annual salary, with a cap of \$350,000. RFA pays the entire cost of basic life insurance premiums. Title 5 offers Federal employees basic life insurance at two times the employees' annual basic insurance amount<sup>75</sup> when they are younger than 35, with the payment decreasing to the annual basic insurance amount when the Federal employee reaches age 45. The Federal Government pays only one-third of the premiums, and Federal employees pay the remaining two-thirds.

### **Collective Bargaining Agreement and Comparability Study**

Some RFA maximum annual salaries and benefits exceeded maximum annual salaries and benefits provided to Federal employees because the work schedule and benefits were required under the terms of a collective bargaining agreement with an employee union.<sup>76</sup>

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<sup>75</sup> Annual basic insurance amount is equal to an employee's annual basic pay rounded to the next \$1,000 plus an additional \$2,000.

<sup>76</sup> A collective bargaining agreement is a legal contract between an organization's management and a trade union representing employees of the organization. A collective bargaining agreement establishes the conditions of employment for the covered employees (such as wages, working hours, and conditions).

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Although the collective bargaining agreement technically covers only RFA's broadcasters and some administrative staff, RFA offers the provisions of the agreement to all RFA employees to maintain equity among its staff. RFA's Human Resources Director stated that although the collective bargaining agreement directs a 7-hour work day, RFA employees "routinely work in excess of eight hours per day" without compensatory time or overtime pay. Although the collective bargaining agreement is a legally binding agreement, the grant agreement, which was in place before the collective bargaining agreement, is also a legally binding agreement. Federal Government funds should not be used to pay for salaries and benefits in excess of those allowed by Title 5.

Another reason that RFA's maximum annual salaries and benefits exceeded the maximum annual salaries and benefits provided to Federal employees was that BBG had not performed a recent comparability study. Although BBG's Grantee Handbook required BBG to perform a comparability study annually to verify the comparability of compensation plans, a study had not been performed since 2007. The 2007 study indicated that, in aggregate, the salaries and benefits offered by RFA to its employees were comparable to the salaries and benefits offered by BBG to its employees. However, the 2007 study was performed before certain benefits, such as parental leave, were provided to RFA employees.

**Some Funds Identified as Questioned Costs Could Have Been Put to Better Use**

As a result of its testing and analysis, OIG is questioning the \$19,854 that was spent on unallowable non-personnel-related costs. Further, the amount of the maximum annual salaries and benefits that exceeded similar maximum annual salaries and benefits that were provided to Federal employees was unallowable. These questioned costs could have been put to better use by RFA or returned to BBG.

**Recommendation 18.** OIG recommends that the Broadcasting Board of Governors direct Radio Free Asia (RFA) to make and verify that RFA has made the necessary journal entries to correct the funding used for \$15,292 in travel costs OIG identified as allowable but where incorrect funds were used.

**BBG Response:** BBG concurred with the recommendation, stating that it would "make necessary inquiries to retrieve supporting documentation for the posting of travel costs in the general ledger to make the proper evaluation of correct posting logic."

**RFA Response:** RFA concurred with the recommendation and provided documentation showing that it had prepared and posted the journal entries requested by OIG.

**OIG Reply:** Based on OIG's review and acceptance of the documentation provided by RFA on the posting of the adjusting journal entry, OIG considers this recommendation closed.

**Recommendation 19.** OIG recommends that the Broadcasting Board of Governors (BBG) make a determination as to whether promotional items, in general, are an appropriate cost for Radio Free Asia (RFA). If BBG does not believe that promotional

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items are an appropriate RFA cost, BBG should inform RFA that promotional items should not be purchased using grant funds.

**BBG Response:** BBG concurred with the recommendation but noted that “if BBG determines that promotional items are a necessary expense of international broadcasting, then we do not need an OMB waiver.”

**RFA Response:** RFA concurred with the recommendation, stating that it “believes that BBG can make the determination of allowability of the promotional items cited in this finding without the need to seek an OMB waiver.” RFA based this position on the provisions of 22 CFR 518.4, which permits the Federal awarding agency itself to grant case-by-case deviations.

**OIG Reply:** Based on BBG and RFA concurrence, OIG considers the recommendation resolved. Further, based on comments about the recommendation to obtain a waiver from the OMB, OIG reviewed the cited criteria and modified the recommendation to remove the requirement for an OMB waiver. The recommendation can be closed when OIG receives and accepts documentation showing that BBG (a) has made a determination on whether RFA can use funds for the types of promotional activities that it was performing and (b) either formally grants a deviation from the OMB standards or notifies RFA that it cannot use funds for promotional activities.

**Recommendation 20.** OIG recommends that the Broadcasting Board of Governors make a formal determination on the \$19,854 in questioned costs related to Radio Free Asia’s purchase of promotional items and contributions identified by OIG.

**BBG Response:** BBG concurred with this recommendation.

**RFA Response:** RFA concurred with the recommendation, stating that the “expenditures were reasonable and were needed to advance the purpose of outreach for the award and urges BBG to ratify these expenditures.”

**OIG Reply:** While BBG concurred with this recommendation, the response was not satisfactory to resolve the recommendation because management did not provide a decision with respect to the validity of the \$19,854 in questioned costs related to Radio Free Asia’s purchase of promotional items and contributions.<sup>77</sup> This recommendation can be resolved when BBG provides a determination (dollar value agreed to or not agreed to) on the validity of the \$19,854 in questioned costs. This recommendation can be closed when OIG receives and accepts documentation showing the actions BBG has taken related to the \$19,854 in questioned costs, including the recovery of any costs determined to be disallowed.

**Recommendation 21.** OIG recommends that the Broadcasting Board of Governors (BBG) work collaboratively with Radio Free Asia (RFA) to perform a comparability

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<sup>77</sup> Inspector General Act, as amended, Pub. L. No. 95-452 § 5(a)(8).

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study of RFA salaries and benefits and determine whether the salaries and benefits offered by RFA violate the requirements of the grant agreement. If they do, BBG should direct RFA to bring salaries and benefits into compliance with the grant agreement.

**BBG Response:** BBG concurred with this recommendation, stating that it is reestablishing “the annual comparability study to verify the comparability of compensation plans across all BBG entities.”

**RFA Response:** RFA concurred with the recommendation.

**OIG Reply:** Based on BBG concurrence, OIG considers the recommendation resolved. The recommendation can be closed when OIG receives and accepts documentation showing that BBG has performed a comparability study of RFA salaries and benefits and requested that RFA take action to address any salaries and benefits that do not comply with the grant agreement.

## List of Recommendations

**Recommendation 1.** OIG recommends that the Broadcasting Board of Governors define its grant monitoring structure, formally document the roles and responsibilities of all parties involved in the grant monitoring process, and revise its Grantee Handbook accordingly.

**Recommendation 2.** OIG recommends that the Broadcasting Board of Governors develop and implement a comprehensive grant oversight program and revise its Grantee Handbook to document the specific procedures for the grant oversight program.

**Recommendation 3.** OIG recommends that the Broadcasting Board of Governors (BBG) develop and implement a training plan for all employees involved in grant oversight as determined in response to Recommendation 1. This training plan should cover both Government-wide requirements for grant oversight and also BBG's internal grants policies and procedures. BBG should revise its Grantee Handbook to include the training plan.

**Recommendation 4.** OIG recommends that the Broadcasting Board of Governors (BBG) formally designate a grants analyst to monitor Radio Free Asia. As part of the designation, BBG should ensure that the grants analyst's responsibilities are clearly defined and communicated to that employee.

**Recommendation 5.** OIG recommends that the Board of Governors formally designate a high level Broadcasting Board of Governors (BBG) official, such as the Chief Executive Officer, as the official responsible for approving initiatives to improve BBG's grant oversight process.

**Recommendation 6.** OIG recommends that the Broadcasting Board of Governors (BBG) ensure that the Board of Governors immediately receives training and guidance on its responsibilities as a Board. This training and guidance should include, but not be limited to, information on Federal requirements for overseeing grantees and BBG's internal grant oversight policies and procedures. The training should also address the Board's responsibilities for ensuring that BBG complies with Federal grants regulations. In addition, BBG should develop a plan to provide refresher training to the Board on its responsibilities annually.

**Recommendation 7.** OIG recommends that the Broadcasting Board of Governors (BBG) develop a formal framework describing how Radio Free Asia should use Internet anti-circumvention funds. This framework should describe BBG's priorities for the use of the funds.

**Recommendation 8.** OIG recommends that the Broadcasting Board of Governors (BBG) revise the grant agreement with Radio Free Asia (RFA) to provide guidance to RFA on the newly developed framework describing BBG's priorities for the use of the Internet anti-circumvention funds, as determined in response to Recommendation 7.

**Recommendation 9.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia to develop and implement supplemental procurement policies and procedures for Open Technology Fund procurements that comply with Federal procurement requirements for grantees.

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**Recommendation 10.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia (RFA) to develop and implement a training plan that ensures that RFA employees involved in the Open Technology Fund procurement process understand the supplemental procurement policies developed in response to Recommendation 9.

**Recommendation 11.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia (RFA) to implement a process to monitor the Open Technology Fund procurement process to ensure compliance with RFA's procurement procedures.

**Recommendation 12.** OIG recommends that the Broadcasting Board of Governors direct Radio Free Asia (RFA) to ensure that employees and Advisory Council members comply with RFA's conflict-of-interest requirements.

**Recommendation 13.** OIG recommends that the Broadcasting Board of Governors (BBG) develop and implement a process to select Open Technology Fund projects that Radio Free Asia (RFA) will fund. Both BBG and RFA officials should be involved in the selection process.

**Recommendation 14.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia to revise its processes to include an assessment of the continued need for funds that are either unexpended or committed and to take action to deobligate funds that are no longer needed.

**Recommendation 15.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia to annually report on the amount of unused funds.

**Recommendation 16.** OIG recommends that the Broadcasting Board of Governors develop and implement a process to oversee Radio Free Asia's unused funds.

**Recommendation 17.** OIG recommends that the Broadcasting Board of Governors make a formal determination on the \$583,583 in questioned costs related to unused funds at Radio Free Asia identified by OIG.

**Recommendation 18.** OIG recommends that the Broadcasting Board of Governors direct Radio Free Asia (RFA) to make and verify that RFA has made the necessary journal entries to correct the funding used for \$15,292 in travel costs OIG identified as allowable but where incorrect funds were used.

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**Recommendation 20.** OIG recommends that the Broadcasting Board of Governors make a formal determination on the \$19,854 in questioned costs related to Radio Free Asia's purchase of promotional items and contributions identified by OIG.

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**Recommendation 21.** OIG recommends that the Broadcasting Board of Governors (BBG) work collaboratively with Radio Free Asia (RFA) to perform a comparability study of RFA salaries and benefits and determine whether the salaries and benefits offered by RFA violate the requirements of the grant agreement. If so, BBG should direct RFA to bring salaries and benefits into compliance with the grant agreement.

## **Scope and Methodology**

The purpose of this audit was to assist the Broadcasting Board of Governors (BBG) in its efforts to manage funds provided to the grantee. Specifically, the objectives of this audit were to determine to what extent BBG monitored Radio Free Asia's (RFA) activities, RFA used Open Technology Fund (OTF) resources to accomplish program priorities, RFA complied with Federal procurement requirements and internal procurement processes for awarding OTF contracts, RFA returned unused unobligated funds to BBG at the end of the fiscal year, and RFA used grant funds provided by BBG in accordance with Federal regulations and the grant agreement.

The Office of Inspector General (OIG) conducted fieldwork for this audit from February to August 2014 at BBG and RFA. OIG limited its audit work to RFA expenditures for FYs 2012 and 2013 and unused funds from FYs 2007-2013. OIG conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that OIG plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on its audit objectives. OIG believes that the evidence obtained provides a reasonable basis for its findings and conclusions based on the audit objectives.

To obtain background for the audit, OIG researched and reviewed public laws and United States Code sections related to grants, Government Accountability Office guidance, the International Broadcasting Bureau Manual of Operations & Administration, BBG's Grantee Handbook, budget-related documents, BBG's strategic plan, and Congressional Budget Justifications. OIG also obtained and reviewed RFA's financial statements, policy and guidance, and OTF annual reports.

OIG interviewed officials at BBG to gain an understanding of its monitoring activities toward RFA, as well as the processes for formulating grantee budgets; for prioritizing needs of and communicating the goals of the Internet anti-circumvention program; for determining the amount of and ensuring unused funds are returned by RFA; and for monitoring and overseeing RFA activities, both financial and performance. OIG also interviewed officials at RFA to gain an understanding of the mission, objectives, and priorities of OTF; to discuss OTF's contracting processes and procedures and other uses of Internet anti-circumvention funds; to determine how OTF projects are selected; to ascertain the processes for determining the amount of and for returning unused funds to BBG; and to determine how compliance with Federal regulations and the grant agreement is monitored by RFA officials.

To determine whether RFA's procurement processes for OTF contracts complied with Federal grantee requirements, OIG selected contracts to review, as described in "Detailed Testing Methodology" in this appendix, and compared the procurement processes with Federal requirements. Further, OIG obtained RFA's written procurement procedures to determine whether RFA established written procurement procedures for OTF-funded contracts. In addition, OIG reviewed the affiliations of the officials making decisions on which projects to fund to determine whether there was a potential conflict of interest. This review was performed by

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conducting Internet searches on Advisory Council members and comparing the information to the projects that were funded.

OIG also performed work to determine whether RFA expended its funds in accordance with Federal regulations and the grant agreement. This effort included reviewing general ledger account titles for compliance with Federal regulations and testing a sample of RFA's non-personnel expenditures for FY 2013 to determine compliance with Federal regulations and the grant agreement. OIG also compared RFA's maximum annual salaries provided to its employees with maximum annual salaries provided to BBG employees through Title 5 of the United States Code. This work is described further in "Detailed Testing Methodology."

To review additional benefits in addition to salaries, OIG used other means to compare benefits RFA's and BBG's benefits, such as annual leave, basic life insurance, and retirement. For example, to reach conclusions on retirement benefits, OIG used a report prepared by an actuarial specialist who determined the approximate service cost of the Federal Government for contributions to the Federal Employees Retirement System.

### **Use of Computer-Processed Data**

The audit team used computer-processed data from RFA's Cost Point System, which is RFA's accounting system. Specifically, OIG obtained a listing of all transactions and a listing of all account balances for FYs 2012 and 2013. OIG used the transactions listing to generate a sample of expenditures for allowability testing. OIG performed substantive testing of the expenditure information obtained during the audit to assess the reliability of the data. In addition, RFA's financial statements, which are produced using data from Cost Point, are audited annually. OIG determined, based on how the data would be used in the report, the assurances provided by the annual financial statement audit, and the procedures performed during this audit, that the data was sufficiently reliable for OIG's needs. Issues identified during fieldwork are detailed in the Audit Results section, Finding E, "Non-Personnel Expenditures Were Generally Allowable, but Some Personnel Costs May Be Unallowable."

### **Work Related to Internal Controls**

OIG performed steps to assess the adequacy of internal controls related to the areas audited. For example, OIG gained an understanding of and tested the controls over the contract process used to award contracts for Internet anti-circumvention efforts. OIG also gained an understanding of and tested the controls over the return of any unexpended funds by RFA to BBG. In addition, OIG gained an understanding of and tested the controls over the allowability of RFA's expenditures. Work performed on internal controls during the audit is detailed in the Audit Results section of the report.

### **Detailed Testing Methodology**

OIG's sampling objectives were to determine to what extent:

- OTF contracts would fulfill program priorities;

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- OTF contracts were in accordance with procurement standards established for grant recipients;<sup>1</sup>
- RFA continued to have a valid need for funds that were committed at the end of FY 2013;
- RFA used its grantee funds in accordance with Federal regulations and the grant agreement; and
- RFA’s salaries were in compliance with Title 5 of the United States Code as required by the grant agreement.

**Selection of OTF Contracts for Determining Accomplishment of Priorities**

To determine whether OTF contracts would accomplish program priorities, OIG obtained all the contracts awarded using OTF funding in FYs 2012 and 2013. RFA awarded 47 contracts,<sup>2</sup> totaling about \$9 million. OIG reviewed each contract and determined the purpose and separated the contracts into six categories, as shown in Table A.1.

**Table A.1. OTF Contracts From FY 2012-2013 by Category**

<b>Contract Category</b>	<b>Number of Contracts</b>	<b>Value of Contracts</b>
Internet Projects	18	\$4,401,397
Mobile Device Projects	12	3,412,087
OTF Web site	5	78,880
Project Security Audits	6	563,445
Translation/Language	2	200,000
Other	4	309,300
Totals	47	\$8,965,109

Source: OIG prepared based on the purpose of each contract.

Of 47 total contracts, 30 contracts, valued at about \$7.8 million, were awarded for Internet and mobile device projects. OIG considered the remaining contracts to be service in nature, for example, website development, audits, translation, and meeting costs. Therefore, OIG focused its analysis on the 30 contracts that were awarded for Internet and mobile device projects, as shown in Table A.2.

**Table A.2. OTF Contracts Included in Analysis**

<b>Contract Category</b>	<b>Number of Contracts</b>	<b>Value of Contracts</b>
Internet Projects	18	\$4,401,397
Mobile Device Projects	12	3,412,087
Totals	30	\$7,813,484

Source: OIG prepared based on the results of its analysis.

<sup>1</sup> 22 Code of Federal Regulations, pt. 518.5, “Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.”

<sup>2</sup> RFA provided OIG a list of 48 contracts awarded with OTF funds for FYs 2012 and 2013. One item included as a contract was actually a contingency fund, which had no contract award associated with it. That item was removed from the universe; so for purposes of this audit, OIG considered only the 47 actual contracts.

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The results of the review are included in the Audit Results section, Finding B, “Broadcasting Board of Governors Did Not Provide Sufficient Guidance on the Use of Open Technology Fund Resources.”

### **Selection of OTF Contracts for Testing Compliance With Procurement Requirements**

To determine whether RFA’s OTF contracts were complying with Federal requirements, OIG judgmentally<sup>3</sup> selected 6 of 30 project-related contracts—with 5 different vendors—that were entered into during FY 2012 or FY 2013.<sup>4</sup> OIG’s primary consideration for the selection of the contracts was dollar value. Each contract selected was more than \$100,000, and the six contracts selected totaled \$3,953,022, which was about 51 percent of the total value of the contracts. However, OIG also considered the relationship of the officials who selected projects for funding to the organizations that received funding when selecting its sample. OIG considered these contracts to be at high risk for abuse.

The six contracts selected were reviewed for compliance with procurement standards established for grant recipients.<sup>5</sup> For each of the selected contracts, OIG reviewed the contract files to determine whether RFA maintained sufficient documentation to support the following:

- Maximum competition or a justification when competitive bids or offers were not obtained.
- Cost or price analysis.
- Basis for contractor selection.
- Basis for award cost or price.
- A system of contract administration, such as evidence OTF staff monitored the performance of the contract awardees to ensure their deliverables met the specifications of the contract.

Additionally, RFA established program and funding guidance that it included on its OTF website. OIG reviewed the contract files to determine whether the contracts received the required project proposal reviews and approvals from OTF management or staff and the OTF advisory council prior to contract award. Additionally, OIG reviewed the contract files to determine (1) whether the budget director and general counsel reviewed the proposals to ensure funding was available and there were no conflicts of interest, respectively, and (2) whether the President of RFA approved the proposals prior to contract award. The results of the review are included in the Audit Results section, Finding C, “Radio Free Asia Did Not Comply With Federal Procurement Requirements or Internal Procurement Processes.”

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<sup>3</sup> A judgment sample is a nonstatistical sampling method in which the sample is selected by using discretionary criteria rather than the laws of probability; a judgment sample cannot be projected to the universe.

<sup>4</sup> The judgmental selection included four contracts from FY 2012 and two contracts from FY 2013.

<sup>5</sup> 22 CFR pt. 518.

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### **Selection of Unexpended Funds for Allowability and Validity Testing**

OIG also performed work to determine whether RFA's unexpended funds were no longer needed and should have been returned to BBG. RFA's unexpended funds consisted of commitments<sup>6</sup> and prior years' unexpended funds. OIG reviewed all commitments included in RFA's FY 2013 financial statements as well as unexpended funds from FYs 2007-2010 to determine their validity. OIG did not review the unexpended funds from FYs 2011 and 2012. The transactions for those 2 years totaled only about \$79,000, and so the value added to the audit work would be minimal. To test unused funds, OIG reviewed supporting documentation to make a determination using the following factors:

- Whether the item or service purchased was allowed by Federal regulation.
- Whether the date that the item or service was to be received had not passed.
- Whether there was activity on the commitment within 6 months of OIG testing.<sup>7</sup>

The results of the review are included in the Audit Results section, Finding D, "Radio Free Asia Did Not Return Unneeded Funds to the Broadcasting Board of Governors."

### **Selection of Non-Personnel Expenditures for Allowability Testing**

OIG selected a sample of non-personnel expenditures from RFA's listing of FY 2013 transactions to test for compliance with Federal regulations<sup>8</sup> and the grant agreement. OIG obtained a listing of all RFA transactions for FY 2013 and removed those transactions related to salaries and benefits, which were tested separately, as detailed in "Selection of Job Titles for Comparison Testing" in this appendix. In addition, OIG excluded both negative transactions and duplicate transactions, which were also tested separately. Lastly, OIG removed all transactions with balances of less than \$10.

OIG selected the non-personnel expenditures for compliance testing using a nonstatistical sampling method known as judgment sampling. Because this method uses discretionary criteria to effect sample selection, OIG was able to use information it obtained during preliminary work to assist in making informed selections. More specifically, judgment sampling was used primarily to ensure that the relatively few high dollar expenditures would be selected and tested.

OIG grouped the expenditures by the financial plan categories, namely Contract Services, Travel and Allowances, Office Space, General and Administrative, Technical,<sup>9</sup> and Capital.<sup>10</sup> Generally, OIG selected all expenditures above certain thresholds or cutoff amounts for the various categories and then randomly selected a determined number of expenditures below the threshold for each category. To the extent practicable, proportionality was used in selecting the

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<sup>6</sup> Commitments represent purchase orders, work orders, and contracts that were issued but for which goods or services had not been received by RFA. Unexpended funds were the unspent portion of the budgeted amount.

<sup>7</sup> OIG performed testing on RFA's commitments during May 2014, meaning there would have needed to have been activity since December 2013.

<sup>8</sup> OMB Circular A-122, "Cost Principles for Non-Profit Organizations," and 48 CFR 31.205-46, "Travel Costs."

<sup>9</sup> Technical expenditures include technical equipment that costs less than \$5,000.

<sup>10</sup> Capital expenditures include property and equipment purchases of \$5,000 or more.

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sample for each category. For example, Contract Services, with the greatest number of and highest dollar amount of expenditures of all categories, was the largest sample; conversely, Capital, with the smallest number of and the lowest dollar amount of expenditures, was the smallest sample of all the categories.

The universe of expenditures provided by RFA was not entirely composed of outlays of funds. Some of the universe items were commitments of funds. OIG attempted to purge the universe of all commitments before sample selection, but this effort met with limited success. In some instances, OIG could determine only after sample selection that purported expenditures were actually commitments. Consequently, the original sample size was decreased, and the universe size needed to be concomitantly reduced. There are, however, undoubtedly other universe items recorded as expenditures in the reduced universe that should be changed to commitments. However, that would have involved checking the entire universe, which was outside the scope of this audit. In addition, RFA, because of circumstances beyond its control, was unable to provide supporting documentation for one General and Administrative expenditure, thereby further reducing the sample. As a result of these reductions, the final number of expenditures sampled and tested was 199, totaling \$1,673,537, as shown in Table A.3.

**Table A.3. RFA Non-Personnel Expenditure Sample Selection**

<b>Category</b>	<b>Universe Total*</b>	<b>Universe Amount*</b>	<b>Number Sampled and Tested</b>	<b>Amount Sampled and Tested</b>
Contract Services	4,051	\$5,560,892	68	\$443,627
Travel	1,829	795,142	44	121,418
Office Space	408	4,072,113	38	575,012
General and Administrative	3,009	2,272,137	34	458,625
Technical	477	312,306	10	21,773
Capital	8	75,916	5	53,082
Totals	9,782	\$13,088,506	199	\$1,673,537

\* The universe of total expenditures and the universe amount of these expenditures as shown in the table are undoubtedly overstated because there are very likely some commitments inadvertently included. Consequently, the totals in these two columns represent upper bounds; they cannot be any larger and are probably less.

Source: OIG prepared based on the results of its testing.

For each of the expenditures tested, OIG determined the allowability of the expenditures based on Federal regulations and the grant agreement. OIG reviewed supporting documentation such as contracts, receiving reports, and invoices to determine whether RFA expended its grant funds in accordance with regulations. The results of the review are included in the Audit Results section, Finding E, “Non-Personnel Expenditures Were Generally Allowable, but Some Personnel Costs May Be Unallowable.”

### **Selection of Job Titles for Comparison Testing**

To determine whether RFA salary levels were in compliance with Title 5 of the United States Code,<sup>11</sup> OIG obtained an employee roster from RFA that included the job title and pay band for each employee. Each of the RFA employee positions or job titles was assigned to one of 19 pay bands that listed a minimum and maximum salary amount (there were no individuals assigned to 3 of the pay bands at the time of the audit). According to the roster, RFA maintained 245 U.S. employees and 8 local hire employees, for a total of 253 employees, as of September 30, 2013. OIG included in its target universe only those job titles for the U.S. employees, as only the U.S. employees' salaries would need to comply with Title 5. For the 245 U.S. employees, there were 89 unique job titles to include in the universe. OIG grouped, by pay band, the job titles with a common element, such as having "Director" in the job title, resulting in five groups or categories. To ensure appropriate coverage across the five categories, OIG selected a judgment sample from each of the categories, which totaled 19 job titles, as shown in Table A.4.

**Table A.4. Job Titles Sampled and Tested**

<b>Pay Band Categories</b>	<b>Number of Job Titles in Universe</b>	<b>Number of Job Titles Sampled</b>	<b>Number of Job Titles Sampled and Tested</b>
L1-L3	7	3	1
3-5	11	2	0
6-7	20	3	1
8-10	30	6	2
11-SES Equivalent	21	5	3
Totals	89	19	7

Source: OIG prepared based on RFA Employee Roster and sampling methodology.

OIG planned to sample and test 20 job titles to determine whether there was comparability between the maximum annual remuneration of RFA employees versus BBG employees. However, when OIG obtained position descriptions for each of the sampled items from RFA and then made the same request for position descriptions for BBG or Voice of America positions with similar duties, BBG officials said that they did not believe BBG had a position description that was comparable to one of RFA's positions. Consequently, OIG sampled the duties and responsibilities for 19 positions, determining the highest salary attainable for the pay band or grade assigned to each position. Of these 19 positions, OIG determined that only seven were comparable and therefore suitable for testing. The results of this testing are included in the Audit Results section, Finding E, "Non-Personnel Expenditures Were Generally Allowable, but Some Personnel Costs May Be Unallowable."

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<sup>11</sup> 5 U.S.C. ch.53, "Pay Rates and Systems."

**Broadcasting Board of Governors Response**



**BROADCASTING BOARD OF GOVERNORS  
UNITED STATES OF AMERICA**

March 25, 2015

Mr. Norman P. Brown  
Assistant Inspector General for Audits  
Office of Inspector General  
U.S. Department of State

Dear Mr. Brown:

Thank you for the consideration shown by your audit team and the opportunity to respond to the Office of Inspector General's draft report, "Audit of Radio Free Asia Expenditures." dated March 2015.

The Broadcasting Board of Governors (BBG) has reviewed the OIG's analysis and draft recommendations and provides its concurrence, as well as comments on recent actions to implement these recommendations, in the enclosures to this letter.

The BBG fully supports the mission and the achievements of Radio Free Asia throughout its short history. RFA's accomplishments, and indeed those of all of BBG's grantees, can only be enhanced through implementation of the management efficiencies and appropriate oversight recommended in the OIG report. We look forward to working with RFA to implement these improvements, and pledge to keep OIG informed of our progress.

Sincerely,

A handwritten signature in black ink, appearing to read "André Mendes".

André Mendes  
Interim Chief Executive Officer and Director

Enclosures

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*Broadcasting Board of Governors*

### **BBG's Response to OIG Draft Report Audit of Radio Free Asia Expenditures March 2015**

**Recommendation 1.** OIG recommends that the Broadcasting Board of Governors define its grant monitoring structure, formally document the roles and responsibilities of all parties involved in the grant monitoring process, and revise its Grantee Handbook accordingly.

**BBG Response:** BBG concurs. BBG has drafted a revised Grantee Handbook, which outlines the roles and responsibilities of various Agency offices in grant oversight and administration. The Grantee Handbook is in draft, pending internal review and approval. BBG anticipates that the Grantee Handbook will be approved and in use by the end of the 1st Quarter of FY 2016.

**Recommendation 2.** OIG recommends that the Broadcasting Board of Governors develop and implement a comprehensive grant oversight program and revise its Grantee Handbook to document the specific procedures for the grant oversight program.

**BBG Response:** BBG concurs. BBG drafted a grant monitoring program (GMP) that aligns with its revised Grantee Handbook, as well as OMB 2 CFR 200 requirements. Both the Grantee Handbook and GMP are pending internal review and approval.

**Recommendation 3.** OIG recommends that the Broadcasting Board of Governors (BBG) develop and implement a training plan for all employees involved in grant oversight as determined in response to Recommendation 1. This training plan should cover both Government-wide requirements for grant oversight and also BBG's internal grants policies and procedures. BBG should revise its Grantee Handbook to include the training plan.

**BBG Response:** BBG concurs. Training slide decks are being developed for both the Federal and Non-Federal entities as a part of a grant monitoring program. Moreover, BBG budget analysts who support the BBG-sponsored Grantees enrolled in grant management training in the 1st Quarter of FY 2015. In addition to basic grant management principles, the BBG budget analysts studied federal grant administration, federal assistance and appropriation law, and cost principles.

**Recommendation 4.** OIG recommends that the Broadcasting Board of Governors (BBG) formally designate a grants analyst to monitor Radio Free Asia. As part of the designation, BBG should ensure that the grants analyst's responsibilities are clearly defined and communicated to that employee.

**BBG Response:** BBG concurs. BBG is actively recruiting an experienced Grants Manager. The Office of Human Resources has indicated that the vacancy announcement

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*Broadcasting Board of Governors*

had closed with over 200 potential candidates. BBG anticipates that a Grants Manager will be onboard by the 3rd Quarter of FY 2015. This person will lead the grant monitoring efforts, in cooperation with a budget analyst from the Office of the CFO. A copy of the USAJobs announcement is set forth in Attachment A.

**Recommendation 5.** OIG recommends that the Board of Governors formally designate a high level Broadcasting Board of Governors (BBG) official, such as the Chief Executive Officer, as the official responsible for approving initiatives to improve BBG's grant oversight process.

**BBG Response:** BBG concurs. Under his delegation of authority from the Board, BBG's Interim CEO/Director Andre Mendes has authority to approve initiatives to improve BBG's grant oversight process.

**Recommendation 6.** OIG recommends that the Broadcasting Board of Governors (BBG) ensure that the Board of Governors immediately receives training and guidance on its responsibilities as a Board. This training and guidance should include, but not be limited to, information on Federal requirements for overseeing grantees and BBG's internal grant oversight policies and procedures. The training should also address the Board's responsibilities for ensuring that BBG complies with Federal grants regulations. In addition, BBG should develop a plan to provide refresher training to the Board on its responsibilities annually.

**BBG Response:** BBG concurs. The Board will receive training on Federal requirements for overseeing grantees and BBG's internal grant oversight policies and procedures, including, for example, the relevant circulars of the Office of Management and Budget. The training may be provided by a combination of internal and external trainers. The timing of the initial training, as well as annual refresher training, will be as determined by the Board.

**Recommendation 7.** OIG recommends that the Broadcasting Board of Governors (BBG) develop a formal framework describing how Radio Free Asia should use Internet anti-censorship funds. This framework should describe BBG's priorities for the use of the funds.

**BBG Response:** BBG concurs. BBG is currently drafting policy and procedures designed to provide oversight for the use of all Internet Anti-Censorship funds to ensure usage is in-line with appropriation language, BBG strategy, and applicable procurement process and approvals.

**Recommendation 8.** OIG recommends that the Broadcasting Board of Governors (BBG) revise the grant agreement with Radio Free Asia (RFA) to provide guidance to RFA on the newly developed framework describing BBG's priorities for the use of the Internet anti-circumvention funds, as determined in response to Recommendation 7.

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*Broadcasting Board of Governors*

**BBG Response:** BBG concurs. In submitting the Agency's FY 2015 Operating Plan to Congress, which includes additional funding for RFA-sponsored OTF projects, the Board expressed (via a notation vote adopted on March 23, 2015) its intent to establish a sound oversight mechanism for any funds granted to RFA. A copy of the notation vote is set forth in Attachment B. In this notation vote, the scope of the Board's direction to the BBG's Interim CEO/Director authorizes the inclusion of conditions, including imposition of these recommended requirements, in any subsequent grant amendment.

**Recommendation 9.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia to develop and implement supplemental procurement policies and procedures for Open Technology Fund procurements that comply with Federal procurement requirements for grantees.

**BBG Response:** BBG concurs. The Board will condition any further grant of IAC funding to RFA on RFA's development and implementation of such policies and procedures, consistent with BBG guidance.

**Recommendation 10.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia (RFA) to develop and implement a training plan that ensures that RFA employees involved in the Open Technology Fund procurement process understand the supplemental procurement policies developed in response to Recommendation 9.

**BBG Response:** BBG concurs. The Board will condition any further grant of IAC funding to RFA on RFA's development and implementation of such a training plan, consistent with BBG guidance.

**Recommendation 11.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia (RFA) to implement a process to monitor the Open Technology Fund procurement process to ensure compliance with RFA's procurement procedures.

**BBG Response:** BBG concurs. The Board will condition any further grant of IAC funding to RFA on RFA's development and implementation of such a process, consistent with BBG guidance.

**Recommendation 12.** OIG recommends that the Broadcasting Board of Governors direct Radio Free Asia (RFA) to ensure that employees and Advisory Council members comply with RFA's conflict of interest requirements.

**BBG Response:** BBG concurs. The Board will condition any further grant of IAC funding to RFA on RFA's development and implementation of compliance with these requirements, subject to BBG oversight.

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*Broadcasting Board of Governors*

**Recommendation 13.** OIG recommends that the Broadcasting Board of Governors (BBG) develop and implement a process to select Open Technology Fund projects that Radio Free Asia (RFA) will fund. Both BBG and RFA officials should be involved in the selection process.

**BBG Response:** BBG concurs. As noted in our response to Recommendation 7, the BBG is drafting policies and procedures designed to provide oversight for the use of all Internet Anti-Censorship funds. These policies and procedures will provide a framework for oversight to ensure that use of the funds is in line with the BBG strategy, relevant appropriations language, and applicable procurement process and approvals. They will also include language indicating that both BBG and RFA officials will participate in the project selection process.

The Agency has already engaged in discussions with the RFA President to ensure that Agency officials, well versed in all areas of Information Technology including IAC and Firewall management, represent the Agency as members of the OTF Advisory Panel. The recently appointed Director of the BBG's IAC program and former Agency Deputy CIO, as well as BBG's IT specialist and recognized expert in IAC matters, will participate as voting members of the OTF Advisory Panel. We will update OIG on these developments as the policies and procedures are completed.

**Recommendation 14.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia to revise its processes to include an assessment of the continued need for funds that are either unexpended or committed and to take action to de-obligate funds that are no longer needed.

**BBG Response:** BBG concurs. BBG will assess the grantees' process for de-obligation of funds. BBG has drafted/revised templates (funds need statement, annual financial plan/statement of disbursement) for use by grantees to identify unexpended or committed funds that are no longer needed and should be de-obligated. These templates will be finalized in tandem with final approvals for the updated Grantee Handbook.

**Recommendation 15.** OIG recommends that the Broadcasting Board of Governors require Radio Free Asia to annually report on the amount of unused funds.

**BBG Response:** BBG concurs. BBG will require Radio Free Asia to annually report on the amount of unused funds.

**Recommendation 16.** OIG recommends that the Broadcasting Board of Governors develop and implement a process to oversee Radio Free Asia's unused funds.

**BBG Response:** BBG concurs. BBG will continue to work with the Grantees, BBG Management, OGC, and OMB to finalize the process for handling grantees' unused funds.

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**These results will be incorporated into the Grant Monitoring Program (GMP), Grantee Handbook and associated templates for reporting.**

**Recommendation 17.** OIG recommends that the Broadcasting Board of Governors make a formal determination on the \$583,583 in questioned costs related to unused funds at Radio Free Asia identified by OIG.

**BBG Response:** **BBG Concur.** **The BBG OCFO will review the questioned cost related to unused funds and make related recommendations to the Interim Director.**

**Recommendation 18.** OIG recommends that the Broadcasting Board of Governors direct Radio Free Asia (RFA) to make and verify that RFA has made the necessary journal entries to correct the funding used for \$15,292 in travel costs OIG identified as allowable but where incorrect funds were used.

**BBG Response:** **BBG concurs.** **The BBG OCFO will make necessary inquiries to retrieve supporting documentation for the posting of travel costs in the general ledger to make the proper evaluation of correct posting logic. Once the evaluation has been conducted the information will be vetted with BBG’s management for presentation to RFA for action.**

**Recommendation 19.** OIG recommends that the Broadcasting Board of Governors (BBG) make a determination as to whether promotional items, in general, are an appropriate cost for Radio Free Asia (RFA), and if so, obtain a waiver from the Office of Management and Budget. If BBG does not believe that promotional items are an appropriate RFA cost, BBG should inform RFA that promotional items should not be purchased using grant funds.

**BBG Response:** **BBG concurs.** **We note, however, that if BBG determines that promotional items are a necessary expense of international broadcasting, then we do not need an OMB waiver. (See 2 CFR 200.421 (b)(4), defining allowable promotional costs to include “[p]rogram outreach and other specific purposes necessary to meet the requirements of the Federal award.”)**

**Recommendation 20.** OIG recommends that the Broadcasting Board of Governors make a formal determination on the \$19,854 in questioned costs related to Radio Free Asia’s purchase of promotional items and contributions identified by OIG.

**BBG Response:** **BBG concurs.**

**Recommendation 21.** OIG recommends that the Broadcasting Board of Governors (BBG) work collaboratively with Radio Free Asia (RFA) to perform a comparability study of RFA salaries and benefits and determine whether the salaries and benefits offered by RFA violate the

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*Broadcasting Board of Governors*

requirements of the grant agreement. If so, BBG should direct RFA to bring salaries and benefits into compliance with the grant agreement.

**BBG Response:** BBG concurs. Currently, BBG is reviewing the revised grantee handbook and re-establishing the annual comparability study to verify the comparability of compensation plans across all BBG entities. The Grant Agreement states that grantees may not “pay any salary or other compensation, or enter into any contract providing for the payment of salary or compensation in excess of the rates established for comparable positions under Title 5 of the United States Code, or the foreign relations laws of the United States.”

## Radio Free Asia Response



Radio Free Asia

March 25, 2015

Mr. Norman P. Brown  
Assistant Inspector General for Audits  
U.S. Department of State, Office of the Inspector General  
1700 N. Moore St.  
Arlington, VA 22209

Dear Mr. Brown,

Thank you for the opportunity to respond to the Office of Inspector General (OIG) draft report *Audit of Radio Free Asia Expenditures*, dated March 4, 2015. Our response includes specific comments about the substance, tone and word choice employed in the report and responds to each recommendation which concerns possible action by RFA.

It should be stated that, during the conduct of the audit, Radio Free Asia (RFA) staff has worked conscientiously to cooperate fully with your audit team responding quickly, completely and transparently to numerous on-site visits, document requests, telephone and e-mail inquiries and conversations. We request that this cooperation and openness be acknowledged in the report since it is addressed to our funding agency, the Broadcasting Board of Governors (BBG), and the report will eventually become a public document. We ask this, in particular, because the audit team itself indicated that it was RFA's recordkeeping and responsiveness which ensured that some data sought directly from BBG was only made available through RFA.

The fact that RFA has fully cooperated does not mean, however, that it agrees with all of the report's statements, conclusions, and recommendations. To the contrary, we believe that the audit team based several of its findings on mistaken or faulty assumptions and drew unwarranted conclusions. As will become clear in your review of what follows, we believe that a number of the cases in which noncompliance was asserted were based on misinterpretation of applicable rules or extension of them to situations to which they do not apply resulting in an overall misimpression of RFA's performance using federal funds.

We draw your attention to this dispositive statement in your report:  
**"Considering the small number and amounts of deficiencies identified, OIG concluded that it is reasonable for BBG to continue to rely on the testing performed by RFA's independent financial statement auditor."**

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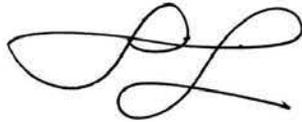
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We have accepted most of the recommendations because we find them to be constructive. We respectfully request that the OIG review each comment and modify the report language based on its demonstrated validity. We also request that the full text of RFA's Transmittal Letter and Specific Comments provided herein be treated as part of the "Views of Management" as called for under generally accepted government auditing standards. We understand, however, that it may not be possible to include all supporting attachments.

Including RFA's response will result in a more balanced final report.

Sincerely,

A handwritten signature in black ink, appearing to be 'Libby Liu', with a stylized, cursive script.

Libby Liu  
President

**Enclosure:** Specific Comments to the OIG Audit of Radio Free Asia Expenditures (including Attachments)

**Radio Free Asia**

**SPECIFIC COMMENTS TO THE OIG AUDIT OF RADIO FREE ASIA EXPENDITURES**

**RECOMMENDATION 9**

**Concur with recommendation and noting the following:**

RFA has a Procurement Policy that is followed for all purchases. RFA acknowledges that there were some departures from its procurement procedures and Office of Management and Budget requirements applicable at the time the contracts examined by the OIG were awarded for some Open Technology Fund (OTF) contracts. RFA believes that those departures were primarily matters of insufficient documentation rather than substantive ones. They were not departures which resulted in harm to the programs supported by the Broadcasting Board of Governors (BBG). RFA believes that proper value was received in these procurements and that program objectives were achieved. However, RFA will immediately initiate a review of its procurement procedures affecting all of its activities, including OTF, and supplement them particularly in light of the recent issuance by the Office of Management and Budget (OMB) of *Uniform Administrative Requirements, Cost Principles and Audit Requirements* (2 CFR 200, effective 12/26/14). The procurement standards contained in that policy guidance (2 CFR 200.317-326) will be fully assessed and appropriately incorporated going forward. This review will assure that competition is conducted to the extent practical. Appropriate cost or price analysis will be conducted and contract administration procedures to assure contractor compliance and performance will be adopted.

RFA believes that OIG's assertions about noncompliance with a requirement for independent cost estimates are incorrect and that its suggestion to rely on language on the subject from the Federal Acquisition Regulation (FAR) is inappropriate. The policy cited in a footnote on Page 21 of the draft by the OIG (22 CFR 518.44) does not require independent cost estimates. RFA will incorporate a procedure to prepare cost or price analysis in compliance with the newly issued OMB policy (2 CFR 200.323(a)) for contracts that exceed the federal Simplified Acquisition Threshold.

RFA will also use the guidance provided in 2 CFR 200.330 to develop a policy concerning the proper characterization of its lower tier relationships, known as "subrecipient and contractor determinations" in the new regulations. RFA suggests that the OIG's characterization of the award

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made to Freedom2Connect Foundation as a subaward (i.e. an award of financial assistance as distinct from a purchase transaction) while at the same time contending that it should have been competitively procured represents an inconsistency on its part. Since there is no past or current general federal requirement for competition of subawards (subgrants) and the oversight requirements for subawards and contracts under grants have and will continue to differ, RFA believes that adopting and following policies on this subject will address the concerns voiced by the OIG.

Please note that on page 16, footnote 34, the OIG stated that the required filings related to the Freedom2Connect Foundation were delinquent. These filings are now up-to-date.

**RECOMMENDATION 10**

**Concur with recommendation and noting the following:**

RFA will initiate a training regimen for appropriate employees involved in organizational procurements, including those involved in the Open Technology Fund, to assure that they are aware of RFA's current procurement procedures. After the review and policy revisions discussed in our response to Recommendation 9 are implemented, those employees will receive the updated information. RFA has already obtained a web based training module entitled "Purchasing with Federal Grant Funds", developed by an experienced training organization, that addresses and analyzes the underlying OMB requirements. The training module will be used as the first step in that process.

**RECOMMENDATION 11**

**Concur with recommendation and noting the following:**

Upon completion of the policy review discussed in Recommendation 9, RFA will conduct near term monitoring of its procurement process through a self-audit of contracts (Attachment I - OTF Project Approval Form) and through reliance on the internal control review conducted by its external auditors under the engagement performed to satisfy requirements of the Single Audit Act of 1984 (as amended). Any deficiencies revealed through such monitoring will be addressed as appropriate.

It should be noted that there was a sole-source justification on file for the two contracts totaling \$200,000 for translations. The six contracts totaling \$563,000 for security audits were awarded to the only companies uniquely qualified to do this type of service.

**RECOMMENDATION 12**

**Concur with recommendation and noting the following:**

The language in RFA's Conflict of Interests policy was drafted by the BBG, and its use is mandated in the Grant Agreement. RFA suggests that BBG review its mandated Conflict of Interests policy to assure that it is in compliance with applicable OMB requirements. RFA will continue to enforce its Conflict of Interests policy through an awareness memorandum to employees, officers, and agents and will incorporate specific subject training into the broader procurement training to be conducted in response to Recommendation 10. However, RFA believes that the OIG has considerably overstated the extent to which conflict of interests may have arisen in the procurements that were reviewed in connection with the audit. RFA suggests that OIG appears to have concentrated on one sentence of the applicable BBG policy without considering the remainder of the applicable provision. The subject provision (22 CFR 518.42) actually states, "No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. **Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for the award** (emphasis added).

First, RFA asserts that Advisory Committee members are not employees, officers, or agents of the organization. Their recommendations concerning selection of contractors are not binding on responsible RFA officials. It is not uncommon or inappropriate for such advisory committee members to have affiliations with organizations with technical expertise in highly specialized areas such as those which OTF is supporting.

Second, RFA believes that to suggest that an alumnus or alumna of an institution of higher education has a real or apparent conflict of interest simply because he or she graduated from the institution stretches the stated OMB policy far beyond its intent. A past affiliation or relationship does not create a conflict of duty with current employment and, in the particular case cited by the OIG, the institution involved is annually one of the top 25 institutions of higher education in terms of total federal funds received (\$482.2 million in FY 2013). To suggest that that institution might divert funds from an intended purpose belies the federal government's longstanding reliance on it as a grantee and a contractor. Further, RFA notes

that to suggest that past employment creates a conflict of interest goes beyond the OMB policy which addresses only current or future employment. RFA suggests that the language related to individuals cited in the report unfairly impugns their integrity. We request that it be substantially edited.

**RECOMMENDATION 13**

**Non-concur with recommendation, noting the following and concur with BBG response to Recommendation 13**

RFA agrees with and supports BBG's recommended action in response to Recommendation 13.

RFA strongly disagrees with the OIG recommendation as formulated. Our position is based on at least two legal and regulatory bases. First, OMB procurement standards (22 CFR 518.41 for past procurements; 2 CFR 200.318(k) for future procurements) provide that "The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered in support of an award or other agreement. This includes disputes, claims, protests, **source evaluation** (emphasis added) or other matters of a contractual nature." This provision has been in place for more than 20 years. RFA believes that its purpose is to recognize privity of agreement and the fact that the Federal awarding agency is not a party to procurement contracts under grants.

Second, if substantial federal involvement in the recipient's procurement process is anticipated, the Federal awarding agency is required by the Federal Grant and Cooperative Agreement Act (FGCAA; PL 95-224, as amended) to issue a cooperative agreement in which that substantial involvement is specified (OMB Directive on implementation of the FGCAA, FR (8/18/78); OMB Federal Assistance Program Announcements, FR 6/23/03; and, more recently, 2 CFR 200, Appendix I). RFA suggests that the OIG's recommendation could give rise to the possibility that BBG would be viewed as using an intermediary to carry out activities that it might be precluded from undertaking directly, a situation that the FGCAA was intended to address. A recent Supreme Court case has ruled that Congressional pronouncements stating that a particular organization is not a

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federal instrumentality are not dispositive when there is substantial governmental control.<sup>1</sup>

It should be noted that RFA reviews all potential projects with the Director of Global Operations/Acting CFO and presents a list of potential projects to be funded during the annual Operating Plan submission process. Again, RFA agrees with and supports BBG's recommended action in response to Recommendation 13.

### **RECOMMENDATIONS 14, 15, AND 16**

#### **Concur with recommendation and noting the following:**

RFA suggests that the presence of obligated but unexpended funds at the end of a grant award year is a common situation that arises in the context of federal awarding agency and recipient interaction. This is reinforced by the BBG practice of allowing Grantees to reprogram prior-year funds.

RFA maintains a monthly record of unexpended funds by year, subject to independent audit, and this information was provided to the IG. (Attachment II - RFA Monthly Status of Prior Year Funds).

RFA will provide a report of prior-year funds at the end of October each year when it submits the final fiscal year financial reports required by the Grant Agreement.

### **RECOMMENDATION 17**

#### **Concur with recommendation and noting the following:**

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<sup>1</sup> *DEPARTMENT OF TRANSPORTATION ET AL. v. ASSOCIATION OF AMERICAN RAILROADS* which held that: For purposes of determining the validity of the metrics and standards, Amtrak is a governmental entity. Pp. 6–12. (a) In concluding otherwise, the Court of Appeals relied on the statutory command that Amtrak "is not a department, agency, or instrumentality of the United States Government," 49 U. S. C. §24301(a)(3), and the pronouncement that Amtrak "shall be operated and managed as a for profit corporation," §24301(a)(2). But Congressional pronouncements are not dispositive of Amtrak's status as a governmental entity for purposes of separation of powers analysis under the Constitution, and an independent inquiry reveals the Court of Appeals' premise that Amtrak is a private entity was flawed. As Amtrak's ownership and corporate structure show, the political branches control most of Amtrak's stock and its Board of Directors, most of whom are appointed by the President, §24302(a)(1), confirmed by the Senate, *ibid.*, and understood by the Executive Branch to be removable by the President at will. The political branches also exercise substantial, statutorily mandated supervision over Amtrak's priorities and operations.

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Of the \$583,583 questioned by the OIG, BBG granted RFA permission to reprogram \$397,347 of this amount. (Attachment III - Email from BBG approving the use of prior-year funds).

Also, it should be noted that the OIG cited (page 30) that one commitment of \$150,000 had expired. This contract was amended on April 30, 2014 extending the time of performance through December 31, 2014, and the remaining two deliverables have been completed.

RFA will continue to monitor the remaining obligated amounts and when it is determined that any of those funds are no longer required for the original purpose, RFA will work with BBG to reprogram those funds

### **RECOMMENDATION 18**

#### **Concur with recommendation and noting the following:**

RFA prepared and posted the journal entries requested by OIG. Copies of the journal entries were submitted to the OIG on February 10, 2015. (Attachment IV - Copy of Journal Entries and relevant support documentation).

### **RECOMMENDATIONS 19 AND 20**

#### **Concur with recommendation and noting the following:**

RFA believes that BBG can make the determination of allowability of the promotional items cited in this finding without the need to seek an OMB waiver. This position is based on the fact that the cost principles applicable at the time that the transactions were consummated (OMB Circular A-122, 22 CFR 230) were incorporated by reference in BBG's regulations at 22 CFR 518.27 and that 22 CFR 518.4 permits the federal awarding agency itself to grant case-by-case deviations from the requirements of the entire regulation (22 CFR 518). RFA suggests that the only time that a waiver is needed from OMB is when an awarding agency such as BBG needs a "class deviation" which is permission to treat a class of recipients or grants differently. Thus, OMB decision-making is warranted when multiple recipients or awards are involved as opposed to a single one, as arose in this case. Further, RFA believes that the expenditures were reasonable and were needed to advance the purpose of outreach for the award and urges BBG to ratify these expenditures.

**RECOMMENDATION 21**

**Concur with recommendation and noting the following:**

RFA believes that the provision of the grant agreement requiring adherence to compensation rates established under Title 5 of the United States Code represents an overly expanded application of the provisions of Section 309(d) of the International Broadcasting Act of 1994 (as amended). That provision states, "It is the sense of Congress that administrative and managerial costs for the operation of Radio Free Asia should be kept to a minimum and to the maximum extent feasible should not exceed the costs that would have been incurred if Radio Free Asia had been operated as a Federal entity rather than as a grantee." We suggest that language does not mean that rates for salaries and benefits paid to RFA employees must adhere to Title 5 as a cost containment measure. It is instead strongly indicated that **overall** costs of operations should not exceed those that would arise if the Federal government (not exclusively the Broadcasting Board of Governors) operated this function. Thus, if an individual element of cost exceeds the amount paid by the federal government for that element, it is entirely possible that offsetting savings might be manifested in other object class categories of expense. Further, use of the word "should" as opposed to the word "must" indicates that the policy is not absolute. We also submit that the requirement that RFA adhere to applicable federal cost principles which identify how reasonableness and allowability of cost for compensation of employees is determined makes no mention of policies used by the Federal government as any specific standard for such determination and that normally compensation policies of grantee organizations are their prerogative.

That stated, RFA recognizes that the grant agreement which was accepted imposes the requirement. However, RFA believes that it has adhered to the requirement and that the analysis presented by the OIG in Table 9 of the draft report is flawed. This is because the analysis fails to take into account what has **actually** been paid to employees (as opposed to the possible maximum salary available for a position in the classification and compensation plan) and it fails to fully accommodate the concepts related to "exempt" salaried employees under the federal Fair Labor Standards Act, a law that RFA is required to follow. First, data provided to the OIG shows that none of the positions/individuals covered in the sample were actually paid at the level of what the OIG identifies as the "RFA Maximum Annual Salary." Thus, there was no noncompliance. Second, the calculations and

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comparisons introduced by the OIG concerning total hours worked mix the concepts of “exempt” and “non-exempt” employees and the requisite compensation approaches under the FLSA. The latter (i.e. non-exempt employees) are individuals whose compensation is built by multiplying an hourly wage by the number of hours worked in a continuous designated 168 hour work period (24/7). Under FLSA, if such individuals work more than 40 hours during that work period, they are entitled to premium compensation at one and one half times their regular wage. The former (exempt employees) are paid a fixed salary which does not fluctuate from work period to work period. They are exempt from the overtime provision, under Department of Labor regulations (29 CFR 541) because of their status as executive, administrative or professional employees. By definition, exempt employees are not limited in the number of hours they may work to receive their salary. Many RFA employees, including those in the sample, routinely work many more hours than those mandated by the minimum attendance requirements imposed on them by RFA and they receive no compensation or compensatory time off for these hours. Thus, to assert that RFA employees are overpaid because their minimum number of hours to be worked differs from that used by the BBG does not accommodate the reality of work patterns in either RFA or BBG.

Having said all of the above, RFA does support this recommendation and requests that the methodology, data and findings be shared with RFA.

### **Enclosures:**

- Attachment I - OTF Project Approval Form
- Attachment II - RFA Monthly Status of Prior Year Funds
- Attachment III - Email from BBG approving the use of prior-year funds
- Attachment IV - Copy of Journal Entries and relevant support documentation

## Office of Inspector General Replies to Radio Free Asia General Comments

In addition to comments directly relating to Office of Inspector General (OIG) recommendations, Radio Free Asia (RFA) provided general comments related to a draft of this report (RFA's comments in their entirety are in Appendix C). OIG considered and incorporated RFA's comments into this report as appropriate. A summary of RFA's general comments and OIG replies are as presented.

**RFA Comment:** RFA believes that OIG's assertions about noncompliance with a requirement for independent cost estimates are incorrect. The policy cited by OIG (22 CFR [Code of Federal Regulations] 518.44) does not require independent cost estimates. RFA will incorporate a procedure to prepare cost or price analysis in compliance with the newly issued Office of Management and Budget policy, 2 CFR 200.323(a), for contracts that exceed the Federal Simplified Acquisition Threshold. RFA will also use the guidance provided in 2 CFR 200.330 to develop a policy concerning the proper characterization of its lower tier relationships, known as "subrecipient and contractor determinations" in the new regulations.

**OIG Reply:** The Code of Federal Regulations, 22 CFR 518.44(e), states, "Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.," when certain conditions apply. One of the conditions is "the procurement is expected to exceed the small purchase threshold...and is to be awarded without competition." The CFR states that the small purchase threshold was \$25,000.

All six of the RFA procurements tested by OIG exceeded \$25,000. In addition, all of the RFA procurements tested by OIG were awarded without competition. Based on the CFR requirements, RFA should have been prepared to provide pre-award review and procurement documents for these procurements including independent cost estimates. OIG did not make any changes to the report based on this comment.

**RFA Comment:** RFA suggested that OIG's characterization of the award made to Freedom2Connect Foundation as a subaward (that is, an award of financial assistance as distinct from a purchase transaction), while contending that it should have been competitively procured, is inconsistent. RFA stated there is no past or current general Federal requirement for competition of subawards (subgrants) and that the oversight requirements for subawards and contracts under grants have and will continue to differ.

**OIG Reply:** OMB guidance states that a subaward means an award of financial assistance made by a recipient, which can be provided by any legal agreement, **even if the agreement is called a contract** (emphasis added).<sup>1</sup> Because the contract between RFA and the Foundation was not for the procurement of goods and services but instead provided financial assistance, the amount provided to the Foundation is a subaward. However, as noted in the OMB guidance, a subaward

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<sup>1</sup> 22 CFR pt. 518.2(ff).

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can be made using a contract. Because RFA entered into a legal agreement with the Freedom2Connect Foundation using a contract, RFA is obligated to comply with the contract requirements established by OMB, as well as ensure that the subrecipient complied with the cost standards established by OMB. OIG did not make any changes to the report based on this comment.

**RFA Comment:** It should be noted that there was a sole-source justification on file for the two contracts totaling \$200,000 for translations.

**OIG Reply:** OIG did not report that two contracts for translations did not have sole-source justifications. OIG concluded that the justifications were not sufficient. OIG did not make any changes to the report based on this comment.

**RFA Comment:** The six contracts totaling \$563,000 for security audits were awarded to the only companies uniquely qualified to do this type of service.

**OIG Reply:** During the audit exit conference, RFA officials made a similar assertion that there are only limited companies capable of performing security audits. OIG asked Broadcasting Board of Governors (BBG) officials, who are familiar with the type of activities performed by these companies, whether there were other companies available to do this type of work. BBG officials stated that this type of work could be done by many companies and agreed that sole sourcing for these services was inappropriate. Therefore, OIG did not make any changes to the report based on this comment.

**RFA Comment:** RFA believes that OIG has considerably overstated the extent to which conflicts of interest may have arisen in the procurements that were reviewed in connection with the audit. RFA suggests that OIG appears to have concentrated on one sentence of the applicable BBG policy without considering the remainder of the applicable provision. The subject provision (22 CFR 518.42) actually states, “No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. **Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for the award** (emphasis added).”

**OIG Reply:** OIG reviewed the section in the report related to RFA’s noncompliance with Federal procurement requirements and concluded that the information presented is accurate. OIG does not believe that it has “overstated” the seriousness of the issue. OIG considered the criteria cited by RFA when it assessed compliance with conflict-of-interest requirements and found that RFA employees participated in the award of Federal funds to an organization in which they had an interest. Further, 51 percent of the amount of Open Technology Fund (OTF) contracts awarded in FYs 2012 and 2013 were made to companies affiliated with members of the Advisory Council. OIG did not make any changes to the report based on this comment.

**RFA Comment:** RFA stated that Advisory Committee members are not employees, officers, or agents of the organization. RFA further stated that the members’ recommendations concerning

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the selection of contractors are not binding on responsible RFA officials and that it is not uncommon or inappropriate for such advisory committee members to have affiliations with organizations with technical expertise in highly specialized areas such as those which OTF is supporting.

**OIG Reply:** Although recommendations made by the Advisory Council members are not binding on RFA, the Council members do have a significant role in the OTF procurement process. Further, RFA has a conflict-of-interest process for its Advisory Council members. However, RFA did not enforce the requirements. For example, as reported in the finding, none of the five awards reviewed by OIG had the required conflict-of-interest documents for the Advisory Council members. Considering that more than 50 percent of the number of OTF contracts during FY 2012 and FY 2013 were awarded to companies affiliated with Committee members and that these awards were not competed, there is clearly an appearance of a conflict of interest that RFA should consider and take appropriate steps to mitigate during the OTF procurement process. OIG did not make any changes to the report based on this comment.

**RFA Comment:** RFA believes that to suggest that an alumnus or alumna of an institution of higher education has a real or apparent conflict of interest simply because he or she graduated from the institution stretches the stated OMB policy far beyond its intent. A past affiliation or relationship does not create a conflict of duty with current employment and, in the particular case cited by the OIG, the institution involved is annually one of the top 25 institutions of higher education in terms of total Federal funds received (\$482.2 million in FY 2013). To suggest that the institution might divert funds from an intended purpose belies the Federal Government's longstanding reliance on it as a grantee and a contractor.

**OIG Reply:** OIG found that the President of RFA established the Freedom2Connect Foundation and that the only transactions performed by the Foundation were to transfer \$1.2 million provided by RFA to the University of California-Berkeley as a gift. This was done even though three of RFA's Advisory Council members questioned the project.

Because RFA officials stated that the President of RFA's relationship with Berkeley was not a significant consideration for the project's funding, OIG has removed the information from the finding.

**RFA Comment:** RFA noted that OIG's suggestion that past employment creates a conflict of interest goes beyond OMB policy, which addresses only current or future employment.

**OIG Reply:** OIG does not agree that past employment does not create the appearance of a conflict of interest. Moreover, the Office of Government Ethics considers prior employment when assessing for conflicts of interest. For example, in a brochure related to the procurement and acquisition process,<sup>2</sup> the Office of Government Ethics discusses issues that could impact the appearance of a conflict of interest. The guidance states that "even though you may not have a financial interest that can be affected by a procurement activity or contract, circumstances might

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<sup>2</sup> Office of Government Ethics, "Ethics & Procurement Integrity: What You Need to Know as a Federal Employee Involved in the Procurement and Acquisition Process" (2007).

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arise that could call your impartiality” into question. Some examples of when your impartiality could be questioned are when “[y]our duties require you to work on a procurement involving your former employer.” The Office of Government Ethics advises employees to “stop working on that matter, and contact your supervisor and agency ethics official” in situations where the employee believes his or her impartiality would be reasonably questioned.

Although the guidance provided by the Office of Government Ethics is intended for Government employees and may not directly apply to RFA, it demonstrates that the consideration of past employment is reasonable when assessing potential conflicts of interest. As OIG reported, during FYs 2012 and 2013 five contracts were awarded to an organization that a high-level RFA official (who was involved in making decisions about procurements) worked at through 2011. This official was responsible for day-to-day operations for OTF and had considerable involvement in overseeing the work performed under the contracts. This person began working for RFA in January 2012. RFA entered into contracts with the official’s former employer in May 2012 (three awards) and in October and November 2013. Considering that these contracts were not awarded based on competition, OIG remains concerned about the appearance of a conflict of interest related to this RFA official. OIG did not make any changes to the report based on this comment.

**RFA Comment:** RFA believes that it adhered to the requirement to comply with Title 5, United States Code, for salaries and benefits provided to RFA employees and that the analysis presented by OIG in Table 9 of the draft report is flawed because the analysis fails to take into account what has **actually** been paid to employees (as opposed to the possible maximum salary available for a position in the classification and compensation plan). First, data provided to OIG shows that none of the positions/individuals covered in the sample were actually paid at the level of what the OIG identifies as the “RFA Maximum Annual Salary.” Thus, there was no noncompliance.

**OIG Response:** OIG elected to compare RFA salaries by randomly selecting RFA positions and analyzing the maximum amount authorized for each position against similar positions in BBG. OIG considers this a reasonable and fair procedure to compare the data. However, based on RFA’s comments, OIG performed additional analyses to compare actual RFA salaries for the selected positions with actual BBG salaries (which were adjusted to reflect the differences in the hours required). As shown in Table D.1, OIG found that RFA salaries paid to four of seven employees tested exceeded the salaries paid to BBG employees in a similar position. Based on these results, OIG did not make any changes to the report.

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**Table D.1. Comparison of Actual Annual Salaries Offered by RFA and BBG With Comparable Duties**

<b>Sample Number</b>	<b>RFA Actual Annual Salary</b>	<b>Adjusted BBG Actual Annual Salary</b>	<b>Difference</b>
S1-03	\$72,427	\$72,785	\$(358)
S3-02	64,655	66,168	(1,513)
S4-02	79,575	97,043	(17,468)
S4-05	96,500	87,888	8,612
S5-01	170,000	155,750	14,250
S5-02	170,690	142,564	28,126
S5-04	\$131,950	\$117,771	\$14,179

Source: OIG prepared based on RFA-provided position descriptions and employee roster and BBG-provided position descriptions and salary amounts.

**RFA Comment:** The calculations and comparisons introduced by OIG concerning total hours worked mix the concepts of “exempt” and “non-exempt” employees and the requisite compensation approaches under the Fair Labor Standards Act (FLSA). The latter (i.e., non-exempt employees) are individuals whose compensation is built by multiplying an hourly wage by the number of hours worked in a continuous designated 168-hour work period (24/7). Under FLSA, if such individuals work more than 40 hours during that work period, they are entitled to premium compensation at one and one half times their regular wage. The former (exempt employees) are paid a fixed salary that does not fluctuate from work period to work period. They are exempt from the overtime provision under Department of Labor regulations (29 CFR 541) because of their status as executive, administrative, or professional employees. By definition, exempt employees are not limited in the number of hours they may work to receive their salary. Many RFA employees, including those in the sample, routinely work many more hours than those mandated by the minimum attendance requirements imposed on them by RFA and they receive no compensation or compensatory time off for these hours. Thus, to assert that RFA employees are overpaid because their minimum number of hours to be worked differs from that used by the BBG does not accommodate the reality of work patterns in either RFA or BBG.

**OIG Reply:** OIG recognizes that some RFA employees may work more than the required 7 hours per day. Similarly, OIG recognizes that some Government employees may work more than the required 8 hours per day. The difference is that when an RFA employee works a typical day (7 hours), that employee is getting paid more than the Government employee who works 8 hours because the RFA employee works 1 hour less and receives a paid lunch hour. This is a benefit not afforded to Government employees. Therefore, when comparing RFA salaries to Title 5 requirements, the paid lunch hour afforded to RFA employees must be considered. OIG did not make any changes to the report based on this comment.

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