



U.S. Department of Energy  
Office of Inspector General  
Office of Audits and Inspections

# Audit Report

The Department of Energy's  
American Recovery and  
Reinvestment Act – New York State  
Energy Program





**Department of Energy**  
Washington, DC 20585

April 19, 2012

MEMORANDUM FOR THE ASSISTANT SECRETARY FOR ENERGY EFFICIENCY AND  
RENEWABLE ENERGY

FROM:

*George W. Callan* for  
Rickey R. Hass  
Deputy Inspector General  
for Audits and Inspections  
Office of Inspector General

SUBJECT:

INFORMATION: Audit Report on "The Department of Energy's  
American Recovery and Reinvestment Act – New York State Energy  
Program"

BACKGROUND

The Department of Energy's State Energy Program (SEP) provides grants to states, territories and the District of Columbia (states) to support their energy priorities and fund projects that meet their unique energy needs. The American Recovery and Reinvestment Act of 2009 (Recovery Act) significantly expanded the SEP by providing an additional \$3.1 billion for state projects. The New York State Energy Research and Development Authority (NYSERDA) was allocated \$123.1 million in SEP funds under the Recovery Act—a more than 63-fold increase over its Fiscal Year 2008 SEP grant of about \$1.94 million. NYSERDA planned to use its grant funds to undertake multiple energy efficiency and renewable energy programs and projects throughout the State of New York (New York), and for subcontractors to oversee and validate certain projects.

To maximize the effectiveness of its Recovery Act grant, NYSERDA officials indicated that they made an extensive effort to distribute funds to as many recipients as possible across the State. Specifically, NYSERDA allocated funds to 6 separate programs that could impact nearly 1,000 recipients. Under three of these programs, NYSERDA provided approximately \$104 million through various fixed-price agreements for energy efficiency and renewable energy projects. For the remaining programs, NYSERDA provided almost \$13 million for cost-reimbursable contracts with commercial entities to provide project management, administrative and evaluative functions. NYSERDA has until April 30, 2012 to expend its Recovery Act funds.

Given the significance and wide impact of the Recovery Act on grant recipients, we initiated this review to determine whether NYSERDA's use of Recovery Act funds was in accordance with Department SEP requirements.

CONCLUSIONS AND OBSERVATIONS

NYSERDA had, for the most part, implemented processes and controls to manage its SEP Recovery Act funding and was generally in compliance with the selected Recovery Act

requirements we examined during our review. However, we identified several concerns that should be addressed to ensure that Recovery Act goals are met. Specifically, our review revealed that NYSERDA:

- Planned to advance over \$1.2 million to a contractor for work scheduled to be completed after the April 30, 2012, expiration date of NYSERDA's Recovery Act grant; and,
- Paid improper travel and unsupported costs of approximately \$12,825 to its contractors and subcontractors.

Additionally, we noted that NYSERDA had been slow to expend its grant funds. As of December 22, 2011, NYSERDA had expended only about 60 percent of its award. We determined that NYSERDA may have difficulty expending the remaining funds before the April 2012 expiration date of its Recovery Act grant. Subsequently, NYSERDA informed us that, as of February 27, 2012, expenditures had increased to approximately 75 percent of the award and the Department had granted a 6-month time extension to complete a small subset of projects. NYSERDA officials told us they were confident that their Recovery Act goals would be met within the established timeframes.

#### Advance Payment

NYSERDA included an option in one of its cost-reimbursable contracts to prepay a contractor over \$1.2 million for work to be completed after the expiration date of NYSERDA's Recovery Act grant. Departmental guidance states that advances paid to recipients of grant funds should be for actual and immediate cash needs. All other payments should be either progress payments as work is being completed or final payments after the completion of the project. However, for one of its six programs, NYSERDA planned to conduct long-term evaluations of the energy savings, cost effectiveness and economic impact of its Recovery Act activities. Specifically, NYSERDA entered into a nearly \$3.5 million contract to conduct evaluations throughout New York, including an advance payment option for over \$1.2 million to fund future program evaluation work. In particular, the optional work was scheduled to be performed through September 13, 2013, considerably beyond NYSERDA's original grant expiration date of April 30, 2012.

#### Cost Reimbursements

NYSERDA reimbursed its contractors and subcontractors for travel costs exceeding allowable amounts and additional unsupported costs of approximately \$12,825. To facilitate its implementation of the Recovery Act, NYSERDA issued nine cost-reimbursable contracts for project management, program evaluations and training. NYSERDA contractors hired subcontractors as needed. Under the agreements, contractors were reimbursed for costs incurred—which included travel and allowable subcontractor costs—for monitoring projects, conducting training sessions and gathering necessary project data. Consistent with OMB Circular A-87, the Department required NYSERDA to comply with the *Federal Travel Regulation* (FTR). NYSERDA also requires its contractors to follow the FTR. The regulations establish maximum allowable per diem rates for lodging costs and require receipts for incurred costs over \$75.

Through August 31, 2011, the 9 contractors submitted 73 invoices requesting nearly \$10.4 million in reimbursements. We reviewed 51 invoices, which included billings from subcontractors, with total travel expenses of \$144,578 and found that:

- Three contractors and two subcontractors had been reimbursed \$4,157 in lodging costs that exceeded per diem rates. These overpayments were as high as \$108 per night; and,
- Two contractors and three subcontractors invoiced and were paid approximately \$4,868 for unsupported costs. No receipts for these costs were found in the associated files reviewed. The costs were often described on the invoices only as transportation, subcontractor costs or simply expense reports, without additional clarification. Therefore, we were unable to determine whether the costs exceeded the \$75 threshold for receipts.

In addition, we identified one contractor invoice from the same sample that included an inappropriate subcontractor billing for \$3,800 that was subsequently paid by NYSERDA. We determined that the amount was for a subcontractor charge unrelated to NYSERDA work.

After we brought these issues to NYSERDA's attention, it took timely corrective action to ascertain the full amount of improper travel costs paid and to recover the money from its contractors. NYSERDA also took prompt corrective action to recover the \$3,800 that had been erroneously paid by contacting the contractor and requiring a credit on the account.

#### Direction, Policy and Contracts

The issues identified occurred, in part, because the Department's direction to NYSERDA was not always timely and adequate. In particular, NYSERDA indicated that the Department did not provide sufficient direction relating to the use of the advance payment option in its award of a contract for evaluating the results of Recovery Act activities. In addition, the omission by NYSERDA of a key Federal requirement from its policy and cost-reimbursable contracts contributed to the problems observed.

#### **Department Direction**

We noted that the Department's direction to NYSERDA was not always timely and adequate. With respect to advance payment, NYSERDA officials told us that, at the time they elected to include the option in the contract, they believed that they were not specifically prohibited from doing so. In particular, prior to finalizing the contract option in September 2010, NYSERDA sought direction from the Department as to how to pay for project activities that would continue beyond April 2012. According to Department officials, NYSERDA was informed by telephone that a decision had not yet been made on this issue. NYSERDA officials contended, however, that a decision was needed in order to move forward with the requirement to obligate all funds by September 30, 2010. When no answer was received from the Department, NYSERDA officials decided to include the prepayment provision as an option they could execute, as needed. After we discovered this advance payment provision, we voiced our concern about NYSERDA plans for using advance payment for work that was not to be completed until after the original April 2012 grant completion date.

Based on our concern, NYSERDA again requested direction from the Department. In July 2011, the Department informed NYSERDA that no project work was to occur beyond the period of performance. NYSERDA then asked the Department if it would be possible to extend the grant's period of performance to allow the option to be exercised. The Department informed NYSERDA that the issue was being considered by Office of Energy Efficiency and Renewable Energy (EERE) management. According to NYSERDA officials, they had not received a response from the Department regarding extension of the grant's performance period as of December 2011. NYSERDA officials told us that, as a result, they decided to remove the prepayment option and reallocate the funds.

### **NYSERDA Policy and Contracts**

NYSERDA's omission of a key Federal requirement from its policy and cost-reimbursable contracts limited the effectiveness of its cost controls over Recovery Act funds. We noted previously that both the Department and NYSERDA indicated that FTR should be followed. However, NYSERDA's policy did not incorporate the Federal requirement. Specifically, while FTR required receipts for incurred costs over \$75, NYSERDA's policy only required support for incurred costs over \$500 and the summarization of travel costs to show relevance to a project. As a result, in contract invoice processing, NYSERDA was not identifying costs incurred that exceeded established FTR per diem rates and unsupported travel costs. In response to our official draft report, NYSERDA informed us that it revised its review procedures to ensure all travel costs are in compliance with the appropriate Federal requirements.

Further, we noted that a clause requiring adherence to FTR was missing from most of NYSERDA's cost-reimbursable contracts funded under the Recovery Act. Specifically, five of the nine cost-reimbursable contracts NYSERDA issued did not include the required clause. After we brought this matter to its attention, NYSERDA acknowledged that an FTR clause should have been included in the contracts. NYSERDA officials told us that their standard cost reimbursable-contract had been inadvertently switched with a standard milestone-type contract. Without the proper clause in the existing contracts, NYSERDA contractors were not required to follow FTR. Before the completion of our review, NYSERDA informed us that it was in the process of modifying its cost-reimbursable contracts to include the requirement.

### Spending Delays

In addition to the issues identified above, NYSERDA experienced delays in spending. As of December 22, 2011, NYSERDA had spent approximately \$72 million or 60 percent of its Recovery Act grant. We voiced our concerns about the slow pace of spending relative to the original April 30, 2012, grant expiration date. The Department, in its May 2011 monitoring report, also expressed concern about the pace of spending and required NYSERDA to develop a Corrective Action Plan that included contingencies for each project and any disencumbered funds, close monitoring of spending, and critical "do-or-die" dates for each project milestone.

To address its spending delays, NYSERDA cancelled projects that could not be completed within the established timeframe and set deadlines that, if missed, would result in a project being defunded. NYSERDA also developed a contingency plan to redirect the disencumbered funds

into other programs. As of February 27, 2012, NYSERDA had expended \$91.7 million or approximately 75 percent of the grant award. On March 5, 2012, NYSERDA officials informed us that the Department granted a 6-month extension to provide additional time for the completion of the remainder of its Recovery Act activities. NYSERDA officials told us they were confident that their Recovery Act goals would be met within the established timeframes.

### RECOMMENDATIONS

NYSERDA's corrective actions to address the issues we identified in this report, once completed, will help it maximize the effectiveness of its project management and evaluations efforts, and expedite the stimulative effect of its Recovery Act expenditures. Accordingly, we recommend that the Assistant Secretary, Energy Efficiency and Renewable Energy:

1. Ensure that NYSERDA only reimburses costs for work performed within the grant period;
2. Direct NYSERDA to revise policy and modify contracts, as necessary, to improve the effectiveness of cost controls over Recovery Act funds; and,
3. Closely monitor the progress of NYSERDA's projects to ensure Recovery Act goals are met and funds are properly and timely spent.

### MANAGEMENT COMMENTS

EERE concurred with the recommendations and stated that it will continue to closely oversee the work carried out under New York's SEP. In particular, EERE will reiterate the broader responsibility of ensuring that costs are paid in the proper manner and will address the issue of cost controls more closely in its upcoming monitoring visits. EERE also stated that it will continue its efforts to ensure that Recovery Act goals are met and funds are spent in a proper and timely manner. EERE's comments are included in Attachment 3.

NYSERDA's President and Chief Executive Officer concurred with our recommendations and indicated that NYSERDA had already taken steps to address the report's observations. NYSERDA believes it is on track to substantially expend its grant funds within the grant period with the exception of a relatively small amount that may be spent within the recently granted time extension. NYSERDA's comments are included in Attachment 4.

### AUDITOR RESPONSE

EERE's and NYSERDA's comments are responsive to our recommendations.

Attachments

cc: Deputy Secretary  
Associate Deputy Secretary  
Acting Under Secretary of Energy  
Chief of Staff

## **OBJECTIVE, SCOPE AND METHODOLOGY**

### **OBJECTIVE**

The objective of this audit was to determine whether the New York State Energy Research and Development Authority's (NYSERDA) use of American Recovery and Reinvestment Act of 2009 (Recovery Act) funds was in accordance with the Department of Energy's (Department) State Energy Program (SEP) requirements.

### **SCOPE**

The audit was performed from March 2011 to April 2012, at NYSERDA in Albany, New York. We also obtained information from the National Energy Technology Laboratory (NETL) in Pittsburgh, Pennsylvania. The audit scope was limited to the State of New York's (New York) SEP.

### **METHODOLOGY**

To accomplish the audit objective, we:

- Reviewed Federal regulations and Department guidance related to the SEP and Recovery Act;
- Reviewed New York's SEP annual plan for Recovery Act funds;
- Reviewed New York's grantee documents for recipients of Recovery Act funds;
- Held discussions with NYSERDA personnel;
- Conducted on-site visits from a random sample of projects; and,
- Held discussions with program officials from NETL.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objective. Accordingly, we assessed significant internal controls and compliance with laws and regulations necessary to satisfy the audit objective. In particular, we assessed the Department's implementation of the *GPRA Modernization Act of 2010* and determined that it had established performance measures for the management of the SEP and the Recovery Act. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. Finally, we did not rely on computer-processed data to accomplish our audit objective.

We held an exit conference with the Department on April 3, 2012. The State of New York waived an exit conference.

## **PRIOR REPORTS**

Under the American Recovery and Reinvestment Act of 2009 (Recovery Act), the Office of Inspector General has initiated a series of audits designed to evaluate the Department of Energy's State Energy Program's internal control structures at the Federal, state and local levels. During our audits, we have noted similar findings such as impediments that adversely impacted the State Energy Program spending rates, inadequate flowdown of Recovery Act provisions to sub-recipients and inadequate monitoring of sub-recipients. However, it must be noted that these issues do not exist in all the states we have audited. Our series of audit reports include the following:

- Audit Report on [\*The Department of Energy's American Recovery and Reinvestment Act – Arizona State Energy Program\*](#) (OAS-RA-L-12-03, January 2012).
- Audit Report on [\*The Department of Energy's American Recovery and Reinvestment Act – California State Energy Program\*](#) (OAS-RA-11-10, July 2011).
- Audit Report on [\*The Department of Energy's American Recovery and Reinvestment Act – New Jersey State Energy Program\*](#) (OAS-RA-L-11-07, April 2011).
- Audit Report on [\*The Department of Energy's American Recovery and Reinvestment Act – Massachusetts State Energy Program\*](#) (OAS-RA-11-06, March 2011).
- Audit Report on [\*Management Controls over the Department of Energy's American Recovery and Reinvestment Act – Michigan State Energy Program\*](#) (OAS-RA-10-18, September 2010).
- Audit Report on [\*Status Report: The Department of Energy's State Energy Program Formula Grants Awarded under the American Recovery and Reinvestment Act\*](#) (OAS-RA-10-17, September 2010).
- Audit Report on [\*The Department of Energy's American Recovery and Reinvestment Act – Georgia State Energy Program\*](#) (OAS-RA-L-10-06, September 2010).
- Audit Report on [\*The Department of Energy's American Recovery and Reinvestment Act – Florida State Energy Program\*](#) (OAS-RA-10-12, June 2010).
- Audit Report on [\*Management Controls over the Department of Energy's American Recovery and Reinvestment Act – Louisiana State Energy Program\*](#) (OAS-RA-10-09, May 2010).

**MANAGEMENT COMMENTS**

**OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY**



**Department of Energy**  
Washington, DC 20585

MAR 06 2012

MEMORANDUM FOR: RICKEY R. HASS  
 DEPUTY INSPECTOR GENERAL  
 FOR AUDITS AND INSPECTIONS  
 OFFICE OF INSPECTOR GENERAL

FROM: KATHLEEN B. HOGAN   
 DEPUTY ASSISTANT SECRETARY  
 FOR ENERGY EFFICIENCY  
 ENERGY EFFICIENCY AND RENEWABLE ENERGY

SUBJECT: Response to Office of Inspector General Draft Audit Report on "The Department of Energy's "The Department of Energy's American Recovery and Reinvestment New York State Energy Program."

The Office of Energy Efficiency and Renewable Energy (EERE) appreciates the opportunity to review the Office of Inspector General's (IG) Draft Audit Report "The Department of Energy's American Recovery and Reinvestment Act – New York State Energy Program." The Office of the Inspector General (OIG) makes three recommendations; we concur with the recommendations as stated.

**Recommendation 1**

**Ensure that NYSERDA only reimburses costs for work performed within the grant period.**

**DOE Response**

There are three issues included in this recommendation:

1. Payment as reimbursement versus as advance,
2. Payment for work performed within the grant period, and
3. The dates of the grant period.

In April 2009, Recovery Act SEP agreements established the rules for grant and cost management through the incorporation of the Department of Energy Financial Assistance Regulations (10 CFR part 600) and the State Energy Program regulations (10 CFR part 420). These regulations include sections that establish grant management procedures for the issues noted above:

1. Advance payments are only permitted under 10CFR600.221(c) "provided [grantees and subgrantees] maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee." Paragraph (d) goes on to state that "reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met." On June 23, 2010, DOE issued State Energy Program Notice 10-011 to provide guidance on spending for ARRA SEP grants. This guidance cited 10CFR600.221(c) and (d) and specified that "state grantees



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- should not draw down funds on ASAP unless they anticipate disbursing the funds (e.g. payments to sub-grantees or sub-recipients) within 3 working days of drawdown.”
2. 10CFR600.223 states that “where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.”
  3. At the time of New York’s request, DOE was considering extending the ARRA SEP grant periods of performance, as authorized by 10 CFR 420.16, which states that “an extension of time by which a required program activity must be ready for implementation may be granted if DOE determines that the extension is justified.” In July 2011, as soon as DOE finalized its decision that no work would be authorized to occur beyond the original period of performance, the Department communicated that decision to NYSERDA.

In concurring with the recommendation, the Department recognizes that it has the responsibility to ensure that Recovery Act funds are managed in compliance with regulations and Department guidance. The IG’s specific recommendation has been addressed in New York’s revision of the contractor agreement in question. DOE will reiterate the broader responsibility of ensuring that costs are paid in the proper manner and only for work performed during the grant period during the next scheduled weekly call with NYSERDA on March 8, 2012. Estimated Completion Date: March 8, 2012.

**Recommendation 2**

**Direct NYSERDA to revise policy and modify contracts, as necessary, to improve the effectiveness of cost controls over Recovery Act funds.**

**DOE Response**

We agree with the recommendations of the OIG. In accordance with 10CFR § 600.220, incorporated in DOE’s grant agreements, grantees are required to maintain specific standards for financial management systems. The Department monitors the compliance of the grantee’s financial management systems with these standards in annual financial monitoring that includes discussions with the grantee and a review of financial documentation. Based on the information and documents reviewed during DOE’s financial monitoring review of New York in June 2011, the Department directed the grantee to amend its sub-contracts to include all the required federal flowdown provisions. In the same report, NYSERDA was found to be following its invoice policies and procedures.

In concurring with the recommendation, the Department recognizes that it has the responsibility to ensure that Recovery Act funds are managed according to regulations and Department guidance. The IG’s specific recommendation has been addressed in New York’s recovery of the travel and billed funds in question. DOE will address the issue of cost controls more closely during the anticipated FY2012 financial monitoring review. Estimated Completion Date: Anticipated by September 30, 2012.

**Recommendation 3**

**Closely monitor the progress of NYSERDA’s projects to ensure Recovery Act goals are met and funds are properly and timely spent.**

**DOE Response**

We agree with the recommendations of the OIG. Within the formal three-year Recovery Act performance period, DOE set interim spending milestones. By September 30, 2010, grantees were expected to have expended 20 percent of their ARRA SEP grant, and by June 30, 2011, 50 percent. To monitor grantee progress toward milestones throughout the Recovery Act, SEP senior managers conducted five rounds of calls with each grantee individually to assess progress and discuss options for accelerating spending. New York’s most recent such progress call took place on November 29, 2011.

Closer monitoring of grantee progress occurs during semi-annual onsite monitoring visits by the DOE Project Officer. The Project Officer for New York first expressed concern about the pace of the grantee's ARRA SEP spending in a May 2011 monitoring report and required NYSERDA to develop a Corrective Action Plan. NYSERDA developed and continues to execute this plan. Since that time, the Project Officer has included the pace of spending as a concern during subsequent monitoring visits in September of 2011 and January of 2012. NYSERDA continues to keep DOE apprised of spending progress both in weekly phone calls and regular e-mail updates.

NYSERDA's spending efforts resulted in \$30 million in spending between September 2011 and January 2012. As of February 27, 2012, New York's spending stands at 73 percent and as of February 10, DOE approved New York's application for an additional six months of grant performance period.

The Draft Audit Report states that NYSERDA's "pace of spending has increased appreciably in recent months" and that "actions to address its low spending rate appear promising." In concurring with the recommendation, the Department underscores its efforts to ensure that Recovery Act goals are met and funds are spent in a proper and timely manner. Estimated Completion Date: Ongoing until end of grant (9/30/12).

DOE thanks the OIG for its recommendations and will continue to implement all corrective actions.

MANAGEMENT COMMENTS

**NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY**



March 5, 2012

Rickey R. Hass  
Deputy Inspector General for Audits and Inspections  
Office of the Inspector General

Dear Mr. Hass:

Thank you for your audit report dated February 15, 2012 and the recommendations included in the report. We are pleased that DOE found that NYSERDA, for the most part, implemented processes and controls to manage its SEP Recovery Act funding and was in general compliance with the Selected Recovery Act requirements examined during the review. Following are management's responses to the recommendations contained in your report.

**Recommendations**

NYSERDA's corrective actions to address the issues that DOE identified in the report, once completed, will help maximize the effectiveness of its project management and evaluation efforts, and expedite the stimulative effect of its Recovery Act expenditures. Accordingly, we recommend that NYSERDA:

1. Ensure it only reimburses costs for work performed within the grant period (Advance Payment).
2. Revise its policy and modify contracts, as necessary, to improve the effectiveness of cost controls over Recovery Act funds (Cost Reimbursement); and,
3. Closely monitor the progress of NYSERDA's projects to ensure Recovery Act goals are met and funds are properly and timely spent (Spending Delays).

**Response to recommendation number 1:**

As DOE recognized in the report, NYSERDA did not reimburse any evaluation contractor for work performed outside the grant period. As set forth more fully below, having sought and not received timely guidance from DOE, NYSERDA did include an option in its evaluation contract to pre-pay for evaluation activities to be conducted after the close of the performance period in order to properly gather information and evaluate projects completed within that period. However, when DOE did finally provide guidance that such pre-payment was not consistent with DOE requirements, NYSERDA eliminated the pre-payment option from its evaluation contract and never made any such pre-payment.

While evaluation was not a required element of State plans for ARRA programs, NYSERDA is one of only a few states that elected to conduct a robust evaluation in order to assess the impacts of the ARRA spending. Consistent with the DOE guidelines for SEP and EECBG evaluations, key metrics addressed in the NY ARRA evaluation include energy savings/renewable generation, carbon reduction, job creation, and cost effectiveness.

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NYSERDA launched its ARRA evaluation effort in the latter half of 2009 by issuing a competitive Request for Proposals to hire an independent consultant to conduct the evaluation work. DOE's evaluation staff was involved in the solicitation development and procurement process, and also had the opportunity to provide input during the subsequent evaluation plan development process with the contractor team selected to perform this work. Numerous conversations took place between NYSERDA evaluators and DOE staff/consultants to ensure the NY evaluation plans were understood and informed by DOE.

Impact evaluation is most commonly and effectively conducted as a retrospective activity in that enough program projects need to be complete in order to select a representative sample, and enough time needs to pass after their installation in order to obtain performance data. From the beginning of the effort, NYSERDA's evaluation plans included an approximately three-year time line, with the final year of evaluation occurring after the projects receiving ARRA funding were completed.

NYSERDA became aware that this evaluation plan may not be feasible given the ARRA spending deadlines and their apparent applicability to all program elements, including evaluation. Additionally, when NYSERDA was informed of the September 30, 2010 deadline for encumbering all ARRA funds, we sought advice as to how our evaluation plans could be implemented given the spending deadline. Not hearing a definitive response, and in accordance with the directive to encumber funds, NYSERDA modified its agreement with the evaluation contractor to include the pre-payment option. This option was not to be exercised for approximately one year, and would only have occurred after a formal 'Notice To Proceed' from NYSERDA to the contractor. NYSERDA hoped to have more definitive guidance from DOE on this issue prior to that time.

In July, after the SEP closeout guidance was issued without mention of the evaluation time line issue, NYSERDA inquired with the DOE General Counsel Hotline as to whether the prepayment option was permissible. We received a written response indicating that the prepayment was not allowed and that the general rules on work/spending that are applicable to the rest of the program apply to evaluation as well.

However, conversations continued with DOE staff about whether certain programs (including evaluation) could request or would be granted extensions beyond the performance period. Those communications continued through Summer 2011 without resolution. Given the DOE General Counsel's response to NYSERDA's Hotline question, and the lack of direction from DOE on possible extensions, NYSERDA modified the agreement with its evaluation contractor in late 2011 to remove the prepayment option and associated funds, and conclude all SEP evaluation work by March 31, 2012. Funds originally earmarked for the final year of evaluation work were reprogrammed into other ARRA activities.

**Response to recommendation number 2:**

NYSERDA agrees with the observations noted in the report and had taken immediate corrective action to recovery travel costs exceeding allowable amounts and unsupported costs totaling \$12,825. NYSERDA has revised its review procedures to ensure that all travel costs are in compliance with OBM Circular A-87 and Federal Travel Regulations. In addition, three of the five contracts containing standard milestone type language are currently being modified to include cost reimbursable language requiring the contractor to comply with Federal Travel Regulations. The remaining two contracts which have been subsequently closed were billed on a cost reimbursement basis.

**Response to recommendation number 3:**

We agree with the goal of ensuring that ARRA funds are spent properly and timely, and we believe our administration of the grant has demonstrated both. Our programs were structured to provide payment to sub-recipients and vendors upon completion of work to provide maximum accountability for the grant funds. This naturally results in a larger portion of expenditures occurring in the later part of each individual project's lifecycle. The nature of the market we supported with assistance for energy efficiency improvements (municipalities, schools and hospitals) have typically longer project lifecycles than energy efficiency improvements in other sectors. However, we believe we are on track to substantially expend all grant funds within the grant period, with the exception of a very modest time extension we requested, and which was approved, for a relatively small amount of funding as a contingency against unanticipated winter weather.

As of February 27, 2012 NYSERDA continued to increase its spending rate and spent approximately \$91.7 million of its \$123.1 million in Recovery Act SEP funding. NYSERDA's active project management has also helped push 95% of all projects to completion and the sub-recipients are in the process of invoicing NYSERDA. Furthermore, on February 10, 2012, DOE granted NYSERDA a modification to the period of performance until October 31, 2012 to allow for additional time to complete a small subset of renewable projects. NYSERDA is confident that the Recovery Act goals will be met within the established timeframe.

We appreciate the recommendations contained in your report. We believe they will help maximize the effectiveness of our project management and evaluation efforts as well as strengthening the Authorities system of internal controls over cost reimbursements. We thank you and your staff for the professionalism displayed during the course of the review.

Please contact me if you have any questions or need additional information.

Sincerely



Francis J. Murray, Jr.  
President and Chief Executive Officer

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