



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

Audit Report

The Department of Energy's Clean
Cities Alternative Fuel Vehicle Grant
Program Funded under the
American Recovery and
Reinvestment Act



OAS-RA-12-12

May 2012



Department of Energy
Washington, DC 20585

May 22, 2012

MEMORANDUM FOR THE SECRETARY

FROM: 
Gregory H. Friedman
Inspector General

SUBJECT: INFORMATION: Audit Report on "The Department of Energy's Clean Cities Alternative Fuel Vehicle Grant Program Funded under the American Recovery and Reinvestment Act"

INTRODUCTION AND OBJECTIVE

Under the American Recovery and Reinvestment Act of 2009, the Department of Energy's Clean Cities Alternative Fuel Vehicle Grant Program (Clean Cities Program) received nearly \$300 million, or 30 times its Fiscal Year 2009 funding of approximately \$10 million. From this amount, the Department awarded grants ranging from \$5 million to \$15 million to 25 recipients, including Clean Cities coalitions and other entities that partnered with coalitions. Clean Cities coalitions are volunteer groups that join with public and private sector organizations to promote alternative and renewable fuels, fuel economy measures and new technologies. Grant funding may be used for the construction or upgrade of alternative-fueling sites and the purchase of commercial vehicles capable of using alternative fuels, including garbage and transport trucks, buses and taxis. The Department required each grant recipient to comply with Federal regulations governing financial assistance awards and to provide at least 50 percent of a project's funding (cost-share). As of March 2012, grantees had expended about \$170 million of their Recovery Act funding.

Because of the importance of the Recovery Act and the dramatic increase in funding, we initiated this audit to determine whether the Department had effectively managed the Clean Cities Program.

RESULTS OF AUDIT

Our review disclosed that the Department had followed established procedures for the solicitation, merit review and selection of the Clean Cities projects. However, the Department had not always effectively managed the use of Recovery Act funding and other post-award aspects of the Clean Cities Program. In our review of seven recipients, we found that the Department had inappropriately:

- Reimbursed a recipient about \$1.5 million for costs incurred even though the costs were not substantiated. Similarly, the Department approved \$615,000 in unsubstantiated cost-share contributions. The lack of substantiation raises transparency issues and

increases the risk that the Department will pay more than its agreed upon share of project costs. Ultimately, based in part on the results of our review, the Department reduced total project costs by approximately \$2 million;

- Paid one recipient \$250,000 for a down payment on an alternative-fueling station that had been invoiced 3 months prior to the grant's authorized spending date of July 2009. After we pointed this issue out, the Department immediately recovered the \$250,000;
- Approved a claim for \$164,000 in cost-share contributions even though the recipient lacked documentation supporting the reasonableness of costs. Accordingly, we questioned the \$164,000 in unsupported cost-share contributions; and,
- Allowed three recipients to award almost \$20 million without documenting their decisions to award contracts and/or identifying potential conflicts of interest as required by Federal procurement regulations. Consequently, the Department lacked assurance that goods and services were procured from the most qualified sources at the best price available. Therefore, we questioned nearly \$3.3 million spent on the projects to date and almost \$1.4 million in cost-share commitments.

Inadequate policies and procedures, and ineffective oversight contributed to the grant administration issues we identified. The Department relied, in large measure, on Clean Cities grant recipients to disclose conflicts of interest and to ensure costs incurred were reasonable without adequately monitoring the grant recipients. For example, Department officials were unaware of a potential conflict of interest involving a coalition board member's company that had been awarded a contract. The recipient had claimed lease payments to a company owned by the board member's family. This was despite information in the award file that, in our view, should have led to questions about the relationship.

We acknowledge that significant responsibilities are placed on coalition recipients to identify and mitigate potential conflicts of interest and to form teaming partnerships prior to the award of a Clean Cities grant under Federal regulations. However, the operating environment of the coalitions requires robust Departmental oversight to ensure that procurement costs are reasonable and to provide the Federal program transparency expected by taxpayers. Specifically, it is important to note that coalitions are comprised of geographically-based networks of individuals and organizations often with mutual business interests. In such situations, heightened Departmental awareness of the potential for conflicts of interest is necessary.

The issues discussed in our report could, if unresolved, ultimately affect the credibility of the Clean Cities Program. In total, we questioned about \$5 million in direct payments to recipients and nearly \$2 million in cost-share contributions claimed by recipients (see Appendix 1). With about \$130 million yet to be spent by the Clean Cities Program, the Department has an opportunity to proactively evaluate and address the significant risks inherent in overseeing a complex program involving numerous coalitions. As such, we made several recommendations to address the issues discussed in our report.

MANAGEMENT REACTION

Management disagreed with many of our findings and recommendations. Specifically, management did not agree with our conclusions regarding policies and procedures governing procurements and potential conflicts of interest, nor did it agree with all of the questioned costs identified. In response to our report, management stated it had developed and implemented adequate policies and procedures for the selection and administration of financial assistance awards. Regarding the procurement issues identified, management asserted that recipients had competed for services and teaming arrangements prior to the approval of the awards and, therefore, were not bound by Federal procurement regulations. Further, management emphasized that teaming arrangements approved as part of the award process were properly reviewed and that they were integral to the success of the projects. Regarding our finding on identifying and mitigating conflicts of interest, management noted that recipients are responsible for ensuring all transactions are free from such conflicts.

Management concurred with our recommendation regarding recipient reimbursement requests, but stated that contracting officers already reviewed requests for the allowability of costs incurred and cost-share amounts contributed. Additionally, management stated that its contracting officers had reviewed, and worked expeditiously to resolve, cost and cost-share claims in the amount of about \$640,000. We noted that the Department had taken action on approximately \$2.5 million in questioned costs and cost-share contributions. However, management did not concur with other costs we questioned, totaling about \$4.5 million relating to unsupported costs, conflicts of interest and procurement concerns (see Appendix 1).

We do not believe management's response fully and satisfactorily addresses our audit findings and recommendations. Specifically, contrary to management's assertions that it had adequate policies and procedures, we noted the Clean Cities Program did not have formal procedures requiring officials to review available information submitted by recipients regarding potential conflicts of interest and to enforce requirements pertaining to the documentation of procurement decisions.

Further, management asserted that competition was not required. However, we emphasize that, for the cases in question, recipients had procured services after their award had been granted and therefore, due to requirements in the award documents, should have complied with Federal procurement regulations. In further support of our position, we note that recipients other than the ones cited in our report had solicited competitive bids with no reported harmful effects on teaming arrangements. Regarding management's position on the identification and mitigation of conflicts of interest, we agree that recipients are responsible for ensuring all transactions are free of such conflicts. However, it is our position that the Department also has significant responsibility in this arena, particularly in regard to overseeing awards in which potential conflicts of interest could jeopardize the integrity of the Clean Cities Program. We remain concerned that recipients awarded contracts to businesses owned by or employing board members of the very same recipient coalitions and to employees or their families. We further note that although one recipient in question had provided information to the Department that could have identified a potential conflict of interest, officials had not properly reviewed such information and taken action to resolve a potential conflict.

Despite management's assertion that contracting officers reviewed reimbursement requests for allowability, the requests had been approved by project officers and contracting specialists without sufficient documentation to justify approval. Therefore, we continue to believe that Clean Cities Program officials should review recipient reimbursement requests for the allowability of costs incurred and cost-share amounts contributed.

Overall, we recognize the risks inherent in the administration of complex, multi-million dollar grants, such as those awarded under the Clean Cities Program. The importance of the Department's oversight activities in these circumstances, therefore, cannot be overstated.

We appreciate the actions taken by the Department to recover and resolve \$640,000 in incurred costs and cost-share contributions, as well as the questionable costs resolved by management during the course of our review. We are hopeful that management will reconsider its positions regarding our concerns about conflicts of interest and competitive procurement. Accordingly, we reaffirm our recommendation that the contracting officers review about \$4.5 million in questioned costs and cost-share claims as part of an official determination regarding cost allowability.

Management's comments are included in their entirety in Appendix 3.

Attachment

cc: Deputy Secretary
Associate Deputy Secretary
Acting Under Secretary of Energy
Assistant Secretary for Energy Efficiency and Renewable Energy
Chief of Staff

**REPORT ON THE DEPARTMENT OF ENERGY'S CLEAN CITIES
ALTERNATIVE FUEL VEHICLE GRANT PROGRAM FUNDED UNDER
THE AMERICAN RECOVERY AND REINVESTMENT ACT**

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THE DEPARTMENT OF ENERGY'S CLEAN CITIES ALTERNATIVE FUEL VEHICLE GRANT PROGRAM FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT

CLEAN CITIES ALTERNATIVE FUEL VEHICLE GRANT PROGRAM

We found the Department of Energy (Department) had followed established procedures for the solicitation, merit review and selection of the Clean Cities projects. However, the Department had not always effectively managed the use of American Recovery and Reinvestment Act of 2009 (Recovery Act) funding and other post-award aspects of the Clean Cities Alternative Fuel Vehicle Grant Program (Clean Cities Program). In particular, we found issues pertaining to questionable reimbursements and cost-share contributions, costs incurred prior to award, and recipient procurement decisions that had not been documented as required by Federal regulations. As a result of the identified issues, we questioned about \$5 million in incurred costs and about \$2 million in cost-share contributions claimed by recipients (See Appendix 1).

Questionable Reimbursements and Cost-Share Contributions

The Department approved questionable reimbursement claims and cost-share contributions for three of the seven recipients we reviewed. In one case, we noted that the Department reimbursed a recipient for unsubstantiated costs claimed and approved unsupported cost-share contributions totaling approximately \$2.1 million. The unsubstantiated costs and cost-share contributions were especially troubling and resulted from transactions involving a potential conflict of interest. Specifically, one recipient awarded funding to an individual who was also a Clean Cities coalition member to construct alternative fuel-dispensing pumps at seven fueling stations. We determined that the coalition member claimed and was reimbursed by the Department approximately \$1.5 million for fuel station upgrades despite the fact that the upgrades included equipment not related to the purpose of the grant. Additionally, upgrades to the fueling stations represented a potential conflict of interest because the coalition member leased the fueling stations from a family member's company in which the individual served as the vice-president. We also questioned approximately \$615,000 claimed as a cost-share contribution resulting from the same questionable, related-party lease transaction. Unsubstantiated cost-share contributions increased the risk that the Department could pay more than its agreed upon share of project costs (See Appendix 1, Example 1).

Department officials informed us they were pursuing questionable payments to, and cost-share contributions from, the recipient at the time of our audit. Based on documents provided by the Department to us, the contracting officer disallowed the entire

cost-share associated with the leases and reduced total project costs by approximately \$2 million, in part, as a result of the potential conflict of interest we identified during our review.

The Department paid a second recipient \$250,000 for costs that were incurred over 3 months prior to the authorized grant award spending date of July 2009. The recipient requested reimbursement for a down payment it had made in April 2009, on an alternative-fueling station. Recipient officials informed us that they had requested reimbursement because the station was not completed until months after the authorized spending date. Department officials told us that they had overlooked the date and erred in approving the amount submitted. As a result of our audit, the Department recovered the \$250,000 (See Appendix 1, Example 2).

Finally, the Department approved nearly \$164,000 in cost-share contributions that were unsupported, including credit for contributing \$83,000 in coalition expenses and \$81,000 in unsupported labor and materials costs. According to the budget documents, the cost-share contributions for the \$83,000 in coalition expenses were not part of the approved budget. As a result of our audit, Department officials required the recipient to either exclude these costs from its next invoice or revise and justify its formerly approved budget. The same recipient claimed that it had contributed approximately \$81,000 toward its cost-share commitment for other labor and materials costs. However, the available documentation lacked the information needed to adequately support the reasonableness of costs, such as actual labor hours and invoices for purchased equipment. Consequently, we questioned the cost-share contributions (See Appendix 1, Example 3). The Department stated the \$81,000 in questioned cost-share represented a portion of a fixed-price contract between the prime and subcontractor attributable to the grant, and therefore, was not subject to delivery of additional supporting data such as hourly wages, labor hours completed and material costs. However, the available documentation submitted to the Department, as part of the reimbursement request, lacked evidence that the costs claimed corresponded to the items in the approved project budget and did not contain costs specifically unallowable such as Federally-sourced funds.

Recipient Procurements

Of the seven grant recipients reviewed, we found three had procured goods and services totaling nearly \$20 million without

documenting the results of award decisions and/or identifying potential conflicts of interest. Specifically:

- Despite Federal regulations and the Department's detailed instructions, one recipient had awarded contracts totaling approximately \$13 million for the construction of 10 alternative-fuel stations and purchases of alternative-fuel vehicles, without documenting the results of its award decisions, including its cost/price analyses. Specifically, without publicly soliciting bids, the recipient awarded contracts for widely available services such as project management, consulting, software implementation, and outreach, in addition to construction of fueling infrastructures. Coalition officials informed us that they "did not issue any bid requests" or "solicit bids" for any of the contracts awarded. Instead they relied on proposals prepared by interested parties that had been made aware of funding through word of mouth and a coalition email to a network of associates. Additionally, the coalition could not provide us with any documentation that it had analyzed the competing unsolicited proposals that it received nor could it provide us with a documented justification for its selection decisions. In our view, the lack of a publically announced solicitation for bids, as was made by other coalition recipients, and the lack of any costs/price analyses of alternative proposals raises questions about the reasonableness of subcontract costs incurred by the recipient. Accordingly, we questioned approximately \$3 million paid to the recipient by the Department and nearly \$1 million in cost-share commitments as of the date of our review (see Appendix 1, Example 4).
- Two recipients had awarded contracts, even though potential conflicts of interest existed. Coalitions are comprised of geographically-based networks of individuals and organizations with mutual interests. Their very structure makes coalitions vulnerable to doing business within an established network and may affect achievement of the Recovery Act's requirements to promote accountability and transparency. Given the millions of dollars in awards received and distributed by coalitions, we are concerned about potential conflicts of interest we observed during our review. For example:

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- A recipient awarded nearly \$6.5 million of its almost \$15 million grant to companies either owned by or employing board members of its participating coalition. While the recipient had solicited bids, its awards were of particular concern, because entities associated with the coalition board members received over 40 percent of the available funding, and there was no documentation demonstrating that the recipient had taken action to mitigate the potential conflicts of interest. The recipient told us that the coalition board members who received subcontracts were not involved in the selection of subcontractors. The subcontractor selection was made by employees of the recipient; however, both selection officials were also members of the coalition board. There was no documentation supporting that coalition board members were excluded from the selection process. Additionally, the recipient did not have any documentation showing how it mitigated the appearance of a conflict of interest created by both selection officials also being on the coalition board with other members who were either employed by, or owners of, companies that submitted subcontract proposals and subsequently received awards. As of the date of our review, the Department had paid the recipient about \$170,000 for costs incurred and allowed nearly an additional \$375,000 in cost-share contributions (see Appendix 1, Example 5).

Department officials stated that because the recipient was solely responsible for subcontract selection, there did not appear to be a conflict of interest. However, as discussed above, in our view, the appearance of a conflict of interest existed because the selecting officials were also coalition board members, who served with other members awarded subcontracts.

- Another coalition recipient had used approximately \$33,000 of its grant funds to pay for administrative services provided by a consulting company owned by the coalition president. Further, the coalition noncompetitively awarded a \$360,000 subcontract

for grant administration to an investment company after the coalition president became the investment company's vice-president. Although there was no indication the individual personally approved the contract, the coalition president's continuing role, in our view, gives rise to a potential conflict of interest in monitoring and overseeing expenditures under the contract. During our review, we found no evidence of a mitigation plan for the potential conflicts of interest at the Department or the recipient level. As of our review, the Department had reimbursed the investment company over \$72,000. We questioned approximately \$105,000 of administrative costs incurred and paid to various subcontractors as of the date of our review (See Appendix 1, Example 6).

The Department disagreed that the above situation created an appearance of a potential conflict of interest. Specifically, the Department stated the coalition president prepared the initial application for the Clean Cities Program award and had substantial knowledge about the entire project and requirements that could not be quickly replaced. Further, the Department noted that the coalition initially did not have a mechanism to pay the president, so the coalition paid the individual through the president's own consulting company. Subsequently, the coalition decided to subcontract with the investment company when the individual changed employment because it wanted to retain the individual's services and to ensure continuity in administering the grant. According to the Department, the individual was recused from the decision to select the new company to administer the grant.

Despite the Department's assertions, we noted that as the coalition president and board member, the individual was ultimately responsible for payments to its consulting company. Additionally, while the Department stated that the coalition did not have a mechanism to pay the individual, we noted that the individual became a paid coalition employee for a short period of time before changing employment to the investment company. In addition, an

independent audit of the recipient specifically identified the relationship between the coalition president, the individual's consulting company, and the investment company as a related-party transaction. Such disclosures are made to address potential conflicts of interest.

Federal regulations expressly prohibit individuals from entering into any contract if a real or perceived conflict of interest exists. Specifically, 10 CFR 600.142 governing non-profit organizations states that:

"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 an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements."

The importance of ensuring fair and open competition, free from any potential conflicts of interest, cannot be overstated.

GRANT ADMINISTRATION

Inadequate policies and procedures and ineffective oversight contributed to the grant administration issues we identified. Specifically, we found the Department had not developed formal policies and procedures requiring officials to review funded projects for potential conflicts of interest and to ensure that recipients met Federal procurement requirements pertaining to the reasonableness of costs. While the Department's guidance on Financial Assistance Awards required a "consideration" of the relationships among partnerships or consortiums during the award process, the guidance did not contain formal procedures that required Federal project managers to review relationships and transactions that may create conflicts of interest. Our review of award files found no evidence that the Department had reviewed the grants for potential conflicts of interest. In fact, prior to our audit, Department officials were unaware of the previously cited example in which a coalition board member's company had been awarded a contract and was claiming lease payments to a family-

owned company despite information being in the award files that, in our view, should have led the Department to question the relationship.

Additionally, although Federal regulations and associated award cost principles require recipients to provide adequate support for their claims for reimbursement, the Department had not thoroughly reviewed recipient requests to ensure all costs were reasonable and well documented. The Department's project officer and contracting specialist are responsible for reviewing requests for reimbursement and cost-share contributions for reasonableness and allowability. However, our review showed the Department had approved cost-reimbursement requests and cost-share claims without sufficient documentation to justify approval. Finally, while the Department generally performs site visits to recipients, we found that these visits focus on technical aspects of the projects and do not include reviews of compliance with Federal procurement requirements.

Management officials told us that grant recipients were primarily responsible for ensuring compliance with Federal procurement and conflict of interest rules. Further, management stated that the Department relies on the recipients' vigilance to ensure that Federal funds are efficiently managed. We are, however, concerned that the risk of fraud, waste and abuse is increased if the Department does not provide adequate oversight to ensure the reasonableness of costs and mitigation of potential conflicts of interest.

Given the questionable claims, lack of information justifying the reasonableness of contract costs, and potential conflicts of interest, we questioned about \$5 million in incurred costs and about \$2 million in cost-share contributions claimed by recipients (See Appendix 1). To its credit, as previously discussed, the Department acted on several issues identified during our audit and had resolved nearly \$2.5 million in questioned costs and cost-share contributions.

RECOMMENDATIONS

Given the significant amount of funding remaining to be spent, the Department has an opportunity to ensure a successful path forward. To help achieve the objectives of the Recovery Act, we recommend that the Assistant Secretary for Energy Efficiency and Renewable Energy direct Clean Cities Program officials to:

1. Develop formal procedures to identify and mitigate potential conflicts of interest and to enforce requirements pertaining to documentation of procurement decisions; and,

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2. Review recipient reimbursement requests for the allowability of costs incurred and cost-share amounts contributed.

Additionally, we recommend that the contracting officers for the Clean Cities Program:

3. Resolve questioned costs remaining of about \$3.2 million and questioned cost-share claims of about \$1.3 million (See Appendix 1).

**MANAGEMENT
REACTION AND
AUDITOR RESPONSE**

Management did not fully concur with our report. Specifically, officials did not agree with our findings and recommendations regarding policies and procedures governing procurements and potential conflicts of interest, nor did they agree that all costs identified in our report were questionable. In addition, management provided technical comments that are addressed in the body of the report. Management's comments and our responses are discussed below. Management's comments are included in their entirety in Appendix 3.

Management Comments

In response to Recommendation 1, management stated that it had already developed and implemented adequate policies and procedures for the selection and administration of its financial assistance awards and disagreed with our finding regarding a recipient's procurement of services without free and open competition. Specifically, management noted that the recipient in question had competed subcontracts prior to their awards, and therefore, was not required to follow Federal procurement requirements. Management stated that requiring competition post-award might have altered the composition of the assembled teams, a major factor in the selection of the recipient. Regarding our concerns about the existence of potential conflicts of interest, management noted that under applicable regulations, recipients bear the primary responsibility for identifying and mitigating real or apparent conflicts. Management stated that when it receives allegations of potential conflicts of interest, it collaborates with the recipient to investigate and determine appropriate mitigation measures when required. After reviewing the circumstances surrounding the potential conflicts of interest identified in our audit, management concluded that recipients appropriately identified and mitigated the potential conflicts.

Management concurred with Recommendation 2; however, it asserted that contracting officers currently review reimbursement requests for allowability of costs incurred and cost-share amounts contributed and would continue to do so.

Finally, in response to Recommendation 3, management stated that contracting officers had reviewed the costs and cost-share claims that we questioned and deemed \$640,000 as unallowable. As discussed, the Department had taken action on approximately \$2.5 million in questioned costs and cost-share contributions. Management did not concur with other costs we questioned, totaling about \$4.5 million relating to unsupported costs, conflicts of interest, and procurement concerns (See Appendix 1).

Auditor Response

We do not believe management's response fully and satisfactorily addresses our audit findings and recommendations. Regarding management's position on procuring services, we noted that although one of the recipients discussed in our report had selected subcontractors before the award, it had not selected them through a competitive process, as asserted by management. Ultimately, the recipient awarded \$13 million in subcontracts without ensuring that these subcontracts were the most cost-effective means of achieving program goals and in the best interest of the taxpayers. Additionally, the subcontracts discussed in our report were actually awarded subsequent to the grant awards. Under Federal regulations, the recipients, therefore, were required to either bid for services or prepare cost/price analyses justifying the reasonableness of costs, neither of which was done. In further support of our position, we note that recipients other than the ones cited in our report had solicited bids with no reported harmful effects on teaming arrangements.

Regarding potential conflicts of interest, we underscore the importance of the Department's oversight in ensuring the integrity of the Clean Cities Program. Applicable regulations set a high bar to prevent real or apparent conflicts of interest for Departmental programs. The existence, or even the perception, of a conflict of interest undermines the public's confidence in the integrity of the Department's Clean Cities Program. We remain concerned that significant contracts were ultimately awarded to businesses owned by or employing recipient board members and to employees or their families. Neither the recipients nor the Department had taken

what we would consider to be appropriate action to protect taxpayer interests in ensuring that contracts are selected, awarded and administered free of potential conflicts of interest.

While we agree that the Department has numerous policies and procedures regarding the award and administration of financial assistance, we noted the Clean Cities Program did not have formal procedures requiring officials to review available information submitted by recipients regarding potential conflicts of interest and to enforce requirements pertaining to the documentation of procurement decisions.

Further, although contracting officers reportedly reviewed reimbursement requests for allowability of costs incurred and cost-share amounts contributed, our audit showed that cost-reimbursement requests and cost-share claims were approved by project officers and contracting specialists without sufficient documentation to justify approval. Therefore, we reaffirm our recommendation that program officials review recipient reimbursement requests for the allowability of costs incurred and cost-share amounts contributed.

We appreciate the actions taken by the Department to recover and resolve \$640,000 in incurred costs and cost-share contributions, as well as the questionable costs resolved by the Department during the course of our review. We encourage management to reconsider its positions regarding our concerns with conflicts of interest and procurement, and accordingly, we reaffirm our recommendation that the contracting officers review about \$4.5 million in questioned costs and cost-share claims as part of an official determination regarding cost allowability.

QUESTIONED COSTS

Table I

Example	Incurred Costs	Cost-Share	Resolved by Department
1. Transactions Involving a Potential Conflict of Interest	\$1,500,000	\$615,000	\$2,115,000
2. Costs Incurred Prior to Award	\$250,000	\$0	\$250,000
3. Excessive and Unsupported Cost-Share	\$0	\$164,000 (Excluded in Cost-Share Total)	\$83,000
4. Lack of Documented Award Decision (Includes \$164,000 identified in Cost-Share Example 3)	\$3,000,000	\$1,000,000	\$0
5. Potential Conflict of Interest with Board Members	\$170,000	\$375,000	\$0
6. Charges Incurred by President of Coalition's Company and Contract Awarded to New Company	\$105,000	\$0	\$0
TOTAL	\$5,025,000	\$1,990,000	\$2,448,000
TOTAL REMAINING TO BE RESOLVED	\$3,275,000	\$1,292,000	

Appendix 2

OBJECTIVE	To determine whether the Department of Energy (Department) had effectively managed the Clean Cities Alternative Fuel Vehicle Grant Program (Clean Cities Program) funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act).
SCOPE	This audit was performed between June 2010 and April 2012, at the Department's Headquarters in Washington, DC, and the National Energy Technology Laboratory in Morgantown, WV and Pittsburgh, PA. In addition, we conducted site visits with seven recipients and 34 sub-recipients.
METHODOLOGY	<p>To accomplish the objective, we:</p> <ul style="list-style-type: none">• Obtained and reviewed relevant laws and regulations related to implementation of the Recovery Act and financial assistance awards administration;• Reviewed the Funding Opportunity Announcement, merit review information, and selection documentation;• Conducted site visits to seven recipients and 34 sub-recipients to observe assets purchased and future sites of projects, interview officials, and analyze financial transactions and implementation of financial assistance requirements as prescribed by the terms and conditions of the awards;• Reviewed all invoices submitted for reimbursements made through the date of our site visits with each recipient;• Obtained access to the Department's Strategic Integrated Procurement Enterprise System and reviewed individual award files for the seven selected recipients;• Interviewed project officers, contract specialists and the contracting officer for each of the seven recipient awards; and,• Conducted interviews and meetings with Department officials and General Counsel.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Accordingly, we assessed significant internal controls and compliance with laws and regulations to the extent necessary to satisfy the audit objective. In particular, we assessed the Department's implementation of the *GPRRA Modernization Act of 2010* and determined that it had established performance measures for the management of the Clean Cities Program. 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 conducted an assessment of computer-processed data relevant to our audit objective and found it to be reliable.

Department officials waived an exit conference.

MANAGEMENT COMMENTS



Department of Energy
Washington, DC 20585

March 14, 2012

MEMORANDUM FOR: GREGORY H. FRIEDMAN
INSPECTOR GENERAL
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 Clean Cities Alternative Fuel Vehicle Grant Program Funded under the American Recovery and Reinvestment Act"

The Office of Energy Efficiency and Renewable Energy (EERE) appreciates the opportunity to review the Inspector General's (IG) Draft Audit Report entitled, "The Department of Energy's (DOE) Clean Cities Alternative Fuel Vehicle Program Funded under the American Recovery and Reinvestment Act." The DOE welcomes the opportunity to work with the IG to improve the Clean Cities program award administration. With this memorandum, we first provide some background on the Clean Cities grant program and then our response to the draft audit.

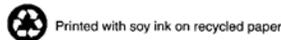
BRIEF BACKGROUND

Section 721 of the Energy Policy Act of 2005 (EPACT 2005) authorizes the establishment of a competitive grant pilot program to be administered through the Clean Cities Program, to provide not more than 30 geographically dispersed project grants to State governments, local governments, and/or metropolitan transportation authorities, in partnership with an active designated Clean Cities Coalition(s). Through funding provided under the American Recovery and Reinvestment Act of 2009 (ARRA), the Clean Cities Program selected 25 projects postured to speed the transformation of the nation's vehicle fleet, putting more than 8,000 alternative fuel and energy efficient vehicles on the road, and establishing over 1,400 refueling stations across the country.

The ARRA funded projects have already deployed over 5,200 alternative fuel vehicles with an additional 1,800 in the pipeline for deployment in the near term. These vehicles are supported by over 732 operational fueling sites with another 160 in process for near term completion.

Summary of DOE Position

EERE is committed to effective grants management and strives to implement sound grants management practices. The IG audit has identified a number of issues, some of which DOE concurs with. However, DOE does not concur with many of the IG findings contained in the draft IG report. In this response, DOE notes additional information that may not be reflected in the report, but is relevant to a number of the findings. The DOE Clean Cities Program was provided \$300 million in funding to accelerate the progress of the program. To date, Clean Cities has judiciously reimbursed more than \$155 million in



Appendix 3 (continued)

payments. It is important to note that while we take all audit findings seriously, the IG's findings in this case pertain to just 0.4% of the total payments executed by the DOE under this program thus far.

RECOMMENDATION #1: *“Develop formal procedures to identify and mitigate potential conflicts of interest and to enforce procurement requirements pertaining to documentation of procurement decisions.”*

MANAGEMENT RESPONSE:

The Department has already developed, and currently utilizes, adequate policies and procedures that reflect government-wide standards for the award and administration of financial assistance. Financial assistance recipients are not required to comply with the Federal procurement requirements of the FAR. DOE has regulations which provide the administrative requirements and operational rules for carrying out financial assistance award and administration. The DOE Financial Assistance Rules, 10 CFR Part 600, implement the Federal Grant and Cooperative Agreement Act (FGCA) of 1977 (31 U.S.C. 6301-08) (which establishes criteria for determining whether a transaction is financial assistance) and establish uniform policies and procedures for the award and administration of DOE financial assistance. Codified into 10 CFR 600 are the Government-wide administrative requirements that apply to financial assistance agreements. These requirements stem from certain Office of Management and Budget (OMB) Circulars. To the extent the coverage of these OMB Circulars applies to recipients and subrecipients, they have been incorporated into 10 CFR Part 600 either in full text or by reference. The OMB Circulars incorporated into the regulations are:

OMB Circular A-110, Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations,

OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments,

OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations (the Single Audit Act), and the circulars for cost principles,

OMB Circular A-21, Cost Principles for Educational Institutions,

OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, and

OMB Circular A-122, Cost Principles for Non-Profits.

DOE also has established administrative requirements and operational rules for financial assistance awards to for-profit organizations in subpart D of 10 CFR 600 — Uniform Administrative Requirements for Grants and Cooperative Agreements With For-Profit Organizations.

In addition to the above statutes and regulations, DOE periodically issues guidance to Contracting Officers by way of the DOE Financial Assistance Guide, Financial Assistance Letters, and policy flashes.

The DOE awards and administers its financial assistance projects in accordance with 10 CFR600. With respect to conflicts of interest, 10 CFR § 600.142 and .143 places primary responsibility for identification and mitigation of real or apparent conflicts of interest on the recipient by requiring them to maintain organizationally written standards, plans or policies governing procurement transactions. Likewise, 10 CFR 600.236 places similar responsibilities on state and local government recipients. Further oversight

Appendix 3 (continued)

of conflicts of interest is evident in 10 C.F.R. § 600.126 which requires recipients to undergo an audit subject to the requirements of the Single Audit Act and revised OMB Circular A-133, which includes a review of potential financial conflicts of interest.

10 CFR 600 contains requirements pertaining to the recipient's post-award procurements of supplies and other expendable property, equipment, real property, and other services with Federal funds. These procurements shall be conducted in a manner to provide open and free competition to the "maximum extent practical." DOE notes that: 1) The specific IG findings in the report involve financial assistance awards in which the subawards *were* competed prior to proposal submittal and financial assistance award; that *process* is not required to be documented, however, the resulting technical and budget proposal submitted (which included the subaward details) was reviewed by DOE according to the criteria set forth in the FOA and approved for award; 2) The government solicitation resulted in a second competition (competing project teams, work proposed and overall cost); and 3) Requiring recompetition of the established team members post award potentially would have altered the composition of the assembled team – with the team members typically being a major factor in the selection of the award.

RECOMMENDATION #2: *"Review recipient reimbursement requests for the allowability of costs incurred and cost share amounts contributed."*

MANAGEMENT RESPONSE: The DOE concurs with this IG recommendation. The Contracting Officers for the program reviewed the costs and cost share claims identified by the IG and worked expeditiously to resolve costs and cost share claims in the amount of \$640K. The DOE Contracting Officers currently review reimbursement requests for the allowability of costs incurred and cost share amounts contributed and will continue to do so.

RECOMMENDATION #3: *"Resolve questioned costs remaining of about \$3.3M and questionable cost share claims of \$1.3M."*

MANAGEMENT RESPONSE: The IG audit identified approximately \$640K of questioned costs that were later deemed unallowable costs by the Contracting Officer. These were incorrectly approved for reimbursement by the DOE and represent findings that would be expected of an audit. This further enforces the usefulness of independent audits, which are required by the regulations (See generally, 10 CFR § 600.126). The following table describes the types of unallowable costs noted by the audit team that the Contracting Officer determined to be actionable by the DOE. The remaining costs identified by the IG report as "questionable," are addressed in the applicable sections of this response and are not concurred upon by the DOE Contracting Officer.

Table 1: Audit Team Unallowable Cost Findings

Unsubstantiated Lease Value	\$307,000	Disallow Cost
Costs Not Identified in Project Budget	\$83,000	Disallow Cost
Unallowable Pre-Award Cost (Down Payment)	\$250,000	Disallow Cost
Total	\$640,000	

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