

STIMULUS OVERSIGHT PANEL



Third Quarterly Report October 2010

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BACKGROUND

On July 9, 2009, Governor David A. Paterson ordered the creation of a Stimulus Oversight Panel (“Panel”) to ensure that the over \$34 billion of federal funds provided to New York State under the American Recovery and Reinvestment Act of 2009 (ARRA) are utilized with transparency and accountability. The Panel is chaired by New York State Inspector General Joseph Fisch and includes state Division of Human Rights Commissioner Galen Kirkland, Metropolitan Transportation Authority Inspector General Barry Kluger and state Medicaid Inspector General James Sheehan. With the signing of Executive Order No. 31 on November 25, 2009, the Panel was formalized and provided expanded jurisdiction over state agencies receiving ARRA funds. The Executive Order charges the Panel with “the prevention and detection of waste, fraud, abuse and mismanagement of ARRA funds, the promotion of transparency and openness,” and the “distribut[ion] [of ARRA funds] in an equitable, fair and non-discriminatory manner.” The Executive Order also requires the Panel to “report on a quarterly basis on the status of ongoing activities and results of investigations performed under th[e] order to the Deputy Secretary for Infrastructure and Transportation and the Counsel to the Governor.” To that end, on March 4, 2010 and June 8, 2010, respectively, the Panel issued its first and second quarterly reports to the Governor’s Office. What follows is the Panel’s third quarterly report.¹

Since July 2009, the Panel has met on an ongoing basis to, among other things, discuss and refine its goals and methods of implementation. The Panel’s “Working Group,” comprised of employees of each Panel member, specifically executive staff, senior attorneys, investigators and auditors possessing specialized knowledge of construction, contracts, healthcare fraud and human rights issues, continues to meet on a bi-weekly basis. First Deputy Inspector General Kelly Donovan chairs the bi-weekly Working Group meetings. During these meetings, the Working Group examines the use of ARRA funds by each of the 22 New York State agencies designated to receive them, develops coordination with other state and federal law enforcement partners responsible for the oversight of ARRA funds, and discusses the progress of investigations that arose from allegations received through the Stimulus Complaint hotline.²

The Working Group invites to its bi-weekly meetings each of the 22 New York State agencies receiving ARRA funding, to provide an overview of its use of ARRA funds and the internal controls in place to prevent fraud. This quarter, the Working Group has met individually with the following New York State agencies:

- The Office of Children & Family Services

¹ The Oversight Panel’s third quarterly report discusses events dating from June 1, 2010 through September 30, 2010.

² Allegations of alleged corruption, fraud, criminal activity, conflicts of interest, abuse or discrimination should be sent directly to the Office of the Inspector General. Complaints can be made by phone (1-800-DO-RIGHT), e-mail inspector.general@ig.state.ny.us, or by written letter to: State Inspector General, Empire State Plaza, Agency Building 2, 16th Floor, Albany, New York 12223. Complaints can also be completed through the State Inspector General’s Web site: <http://www.ig.state.ny.us/complaints/fileComplaint.html>.

- The State Education Department
- The Division of Criminal Justice Services
- The State Office for the Aging
- The State Office of Parks, Recreation and Historic Preservation

The Panel members also work independently within their respective jurisdictions and expertise. Ongoing efforts of the Panel members are detailed below.

THE NEW YORK STATE INSPECTOR GENERAL

The New York State Inspector General has focused much of its attention during this quarter on reviewing and investigating ARRA projects in the areas of Weatherization (administered by the NYS Division of Housing and Community Renewal), and Drinking/Clean Water Projects (administered by the NYS Environmental Facilities Corporation, the NYS Department of Health, and the NYS Department of Environmental Conservation).

I. The Weatherization Assistance Program

The NYS Inspector General has dedicated considerable resources and time to examining the Division of Housing and Community Renewal's (DHCR) distribution of ARRA funds through weatherization grants. As discussed in previous quarterly reports, DHCR has been charged with distributing these funds via weatherization grants through a network of 66 community action groups throughout the state. The weatherization assistance program assists income-eligible families and individuals by reducing their heating/cooling costs and improving the safety of their homes through energy efficient measures.

As recently reported, the NYS Inspector General's office initiated a fraud awareness training program to better inform both the executive staffs and the line employees of the community action groups participating in the Weatherization Assistance Program (WAP) in the detection and prevention of fraud in regard to ARRA funds. The goal is to train the entire staff of all 66 participating community action groups. Thus far, the Inspector General has provided fraud awareness training to 1,027 people in 56 community action groups.

This training has directly led to an increase in the number of complaints received by the Inspector General pertaining to WAP. This report details two such separate investigations. The first involves an ongoing investigation of the Community Environmental Center (CEC) and its administration of a window replacement contract at the Lindsay Park Housing complex in Brooklyn; and, the second involves a completed investigation of the Community Action Commission to Help the Economy, Inc. (CACHE), and its administration of a WAP in Sullivan County, New York.

A. Community Environmental Center and the Disqualification of the Window Installation Bid at the Lindsay Park Housing Complex

The NYS Inspector General received five separate complaints from window installers alleging improprieties in the bidding and award process of an over \$13 million ARRA-funded weatherization grant for Lindsay Park, a seven building residential Mitchell-Lama cooperative complex located in Brooklyn, New York. More than \$7 million of the awarded funds has been allocated for the replacement of approximately 16,900 windows in the complex. DHCR chose CEC to administer the Lindsay Park bid due to its technical expertise in energy efficiency measures and its status as a community action group. DHCR, however, still oversees the project.

The bidding process conducted by CEC commenced on May 14, 2010, when CEC solicited a request for bids for replacement windows at the Lindsay Park complex. The Inspector General's review of the solicitation revealed that CEC had delineated approximately 30 categories on which to bid or about which to supply information, including but not limited to, material and labor costs for the aluminum windows, picture windows, hallway windows, snap trim, mullions, lead removal, child guards, skylight windows and replacement costs. The CEC technical director informed the Inspector General that the specifications for this solicitation were created by CEC specifically for the Lindsay Park project. The director further reported that she notified all of the potential bidders at the May 21, 2010 pre-bid conference that they were required to provide a bid price for every item listed in the bid specifications.

On or before the established May 28, 2010 deadline, 10 window installers submitted bids. The bids were unsealed, announced publically and recorded by CEC on June 1, 2010. At the June 1st bid opening, a CEC employee completed an initial tally of the bids and entered that data into a handwritten spreadsheet. CEC evaluated the bids from June 1, though July 12, 2010, and selected the purported lowest responsible bidder. On July 12, 2010, CEC awarded the project to A.S.K. Construction. Thereafter, the aforementioned five complaints were lodged with either the Inspector General's Office and/or DHCR.

Through analyses comparing the spreadsheet tallies and bid submissions, the Inspector General uncovered the unjust disqualification of one vendor. In its original analysis, CEC disqualified this vendor because of a purported failure to submit a complete bid. However, in crosschecking that explanation with the actual submitted bid, the Inspector General determined that CEC had made a significant error, and that the bidder did in fact submit a complete bid. Compounding that error, were the bids analyzed correctly, the vendor would have been in contention for the lowest bid. CEC never notified the vendor of its disqualification, choosing only to issue a generic letter received by all but the winner, stating CEC had awarded the contract to another installer.

Far more egregious than the improper disqualification of a bidder, the Inspector General found the process for scoring the Lindsay Park window bids to be subjective and unfair, creating, at a minimum, the appearance of impropriety, if not an actual one. For instance, after the opening of the bids, it became apparent that several vendors had failed

to sign required certifications, a disqualifying event. Nevertheless, CEC permitted those vendors to resubmit signed certification forms even though they had been clearly instructed to do so in their sealed bids.

Furthermore, after purportedly requiring all bidders to provide costs for every item listed on the request for bids, CEC subjectively disqualified certain bidders for having omitted pricing while not doing so for others with the same failure. In fact, after failing to provide a price for certain items, CEC permitted one vendor to clarify their bid after it was opened, while not affording others that same opportunity.

The Inspector General further determined that CEC's evaluation process was flawed in its initial tally of lowest bidders. CEC informed the Inspector General that it first added each of the categories in order to determine which of the bidders had the lowest total. However, since some bidders omitted prices for certain categories and because the costs were not all presented in the same format, CEC's initial tally was greatly skewed. Ironically, because of this baseless calculus, bidders who correctly supplied a cost for each category were placed at an unfair disadvantage. Representatives of CEC explained that, based on this flawed initial tally, CEC only considered the bidders with the lowest total numbers in an effort to determine the lowest bidder.

After the initial tally, CEC concluded, based on this flawed analysis, that it would consider only two installers for the lowest bid. Notably, after limiting consideration to these two bidders, CEC asked one of these two installers to clarify its bid, a courtesy not extended to other installers, some of whom CEC ultimately disqualified.

The Inspector General also determined that CEC had not developed its evaluation criteria for analyzing the bids until after opening them and learning of the costs provided by each installer. Specifically, after viewing the proposals, CEC decided to only consider approximately 10 of the over 30 categories to determine the awardee. Since various installers provided the lowest bid in different categories, the determination of which categories to employ necessarily dictated the winner. For instance, CEC's decision not to include the cost for child guards in its final analysis may have resulted in a different lowest bidder for the project.

On August 19, 2010, the Inspector General provided its initial findings with respect to the Lindsay Park windows bid to DHCR. DHCR has since notified the Inspector General that it has invalidated the original windows bid and has decided to re-bid the project. (A copy of DHCR's letter to all of the bidders on the Lindsay Park windows bid notifying them of this decision is attached as Appendix A of this report.)

The Inspector General is currently investigating a number of other allegations involving the installation of energy efficient windows in the NYC weatherization program. The Inspector General will release a comprehensive report detailing its findings in the near future.

B. Significant Bidding Irregularities, Missing Inventory and Prevailing Wage Violations Uncovered at CACHE, a Sullivan County Weatherization Organization

CACHE, located in Liberty, New York, receives annually approximately \$500,000 in core WAP funding. ARRA has provided to CACHE an additional \$505,675 to date in additional weatherization funding. In June 2010, the Inspector General received an anonymous complaint alleging bidding irregularities in ARRA contracts at CACHE, stating that CACHE favored one particular vendor, EVS Burner Services (EVS), and that “EVS gets 99 percent of the contracts.”

CACHE’s in-house weatherization staff performs most of the work to improve an income-eligible person’s home heating and cooling efficiency. However, furnace installations, as well as furnace maintenance, is typically subcontracted to a private company. DHCR requires a competitive bidding process in the award of these contracts. CACHE Weatherization Director Jimmy Crawley oversees the Request for Proposals (RFP), bid openings and reviews, and is required to award the contracts to the lowest bidder.

In a report released contemporaneously with this quarterly report (and annexed herein as “Appendix B”), the Inspector General detailed the results of its investigation, which found significant bidding irregularities by CACHE in the award of four weatherization contracts to “clean and tune” oil and gas furnaces (furnace maintenance).

After reviewing all procurement contracts at CACHE for the last two years, and interviewing its current and former WAP employees, the Inspector General found evidence to support that Crawley steered four contracts to EVS Burner Services (EVS), a solely owned and operated heating and cooling company based in Monticello, New York, by providing inside information to its president. Crawley assisted EVS in modifying its bids, by indicating to the EVS president that he should “check his math,” and thereafter accepting EVS’s modification to its bid in order to win the award.

The Inspector General’s investigation also found that CACHE lacked adequate inventory controls over supplies and equipment purchased with ARRA and state funds intended for WAP. As a result, property was missing from CACHE’s warehouse.

The Inspector General further discovered that CACHE failed to comply with the prevailing wage requirements (Davis-Bacon) of ARRA by paying certain employees less than the established wage rate on ARRA-funded weatherization projects.

The Inspector General will refer the accompanying report on CACHE to the appropriate prosecuting agency for consideration of criminal charges. Additionally, the Inspector General recommends that DHCR provide expansive procurement training to CACHE employees, as well as to similar not-for-profit agencies receiving state and ARRA funding. DHCR should also review its policy and procedure manual to ensure that clear, detailed guidance is provided to these agencies conducting competitive bidding and inventory control. The Inspector General has referred its findings regarding non-compliance with the Davis-Bacon requirements to the U.S. Department of Labor for its

review and appropriate action. (The Inspector General’s full report on this matter is attached as Appendix B of this report.)

II. Drinking and Clean Water Projects

New York State received \$432 million in ARRA funding for its Clean Water State Revolving Fund (SRF) and \$86.8 million for its Drinking Water SRF. As discussed previously in prior quarterly reports, the New York State Department of Environmental Conservation (DEC) oversees the Clean Water SRF and the Department of Health (DOH) oversees the Drinking Water SRF. DEC and DOH, together with the New York State Environmental Facilities Corporation (EFC), provide financing for water quality projects to localities and municipalities through low interest loans and loan forgiveness. Continuing its focus on clean water projects, the Inspector General’s staff visited seven ARRA-funded clean water and drinking water projects with combined ARRA funding of \$54 million.³ Additionally, on August 23, 2010, EFC entered into a joint venture with CDM/C&S to provide ARRA compliance assistance and monitoring services at ARRA-recipient project sites. Accordingly, engineers will conduct bi-monthly inspections throughout the pendency of the project, and the Inspector General will work with the engineers, which will include joint site visits.

A. Mamaroneck Water Treatment Plant



On June 3, 2010, the Inspector General visited an ARRA-funded clean water project in Mamaroneck, New York. That \$55.4 million project, substantially funded by ARRA, will upgrade biological nutrient removal at the Mamaroneck Waste Water Treatment Plant with the goal of reducing the amount of nitrogen released into the Long Island Sound. Mamaroneck is one of seven wastewater treatment plants serving Westchester County. Four of the plants are located on and spill into the Long Island Sound, while the other three are located on the Hudson River. Following years receiving federal EPA and DEC violations, Westchester County entered into a consent order in December 2008, and agreed to reduce the nitrogen levels in the sewage water ultimately

³ Visits to three of the job sites were led by First Deputy Inspector General Kelly Donovan, four by Albany Chief of Investigations Darren Miller, accompanied by additional members of the Inspector General’s staff.

released into the Long Island Sound. Westchester County will do so by substantially upgrading its Mamaroneck and New Rochelle plants. ARRA monies substantially funded the \$55 million upgrade at Mamaroneck, which included the purchase and installation of four large treatment tanks as well as the installation of micro filters to be used in the tanks to extract nitrogen from the water as it passes through this one of many water-processing steps.



The Inspector General met with DEC, EFC and Westchester County officials and reviewed all contract-related documents for the Mamaroneck project including the procurement bids for equipment and the bid solicitation, bid tabs and contract agreements with the primary engineer, EC/Savin and primary contractor, Carlin Contracting Company. The Inspector General reviewed ARRA-related provisions such as Buy American and Davis-Bacon. Some of the topics discussed included compliance with prevailing wage laws, M/WBE utilization requirements and change order procedures and scrutiny. EFC informed the Inspector General that it requires monthly engineer reports, certified payroll records and M/WBE forms from the contractors.

B. Essex County Clean Water Projects

Over the course of two days, July 14, and 15, 2010, the Inspector General conducted site visits of four ARRA-funded clean water projects in the towns of Essex, Ticonderoga, Newcomb and Schroon. All four towns retained the services of the engineering firm AES Northeast to oversee their respective projects to ensure the timely completion of the construction, working within the budget and compliance with ARRA requirements.

Before inspecting each construction site, the Inspector General met with town officials, as well as the project manager with AES Northeast and EFC, to discuss the project in general and ARRA compliance in particular; specifically, fraud prevention protocols, internal controls, competitive bidding procedures for procuring goods and services, change order review, M/WBE compliance oversight, and prevailing wage payment confirmation. The Inspector General also obtained samples of records to verify the systems implemented by the towns and the project manager. The Inspector General also met with the AES Northeast inspector who oversees the individual projects.

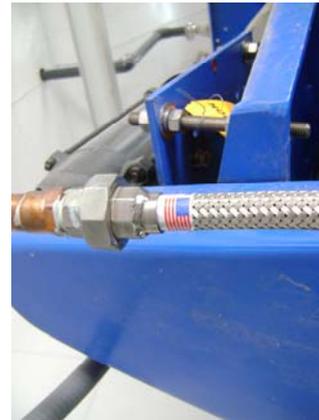
The first site visited by the Inspector General was in the Town of Essex, a historic hamlet on Lake Champlain. Over \$5.3 million in ARRA funds has been designated for the Town of Essex to design and construct a waste treatment plant to better and more

consistently treat wastewater. This waste treatment plant will improve the water quality of a tributary of the Hudson River and Lake Champlain off the Town's shoreline. The project broke ground, which has been in the making for over 40 years, approximately one week prior to the Inspector General's arrival.



Depicted above (left) is the clearing of the plot where the treatment plant will be located. The Inspector General reviewed the architectural plans, which revealed a treatment plant which will resemble a farmer's barn in order to blend into the rural landscape. During the site inspections, the Inspector General observed in a contractor's trailer a prevailing wage notice (depicted above right), which provides the construction crews with information about the Davis-Bacon and Related Acts wage requirements imposed by ARRA. The AES Northeast inspector also conducts interviews of the crews working on the job site to ensure the receipt of appropriate wages.

The Inspector General then inspected the Town of Ticonderoga's renovation of its existing treatment plant and sewer upgrades for the collection and treatment of both sanitary wastewater and wet weather flows near the La Chute River and the discharge from Lake George into Lake Champlain. Among other funding, Ticonderoga is receiving over \$3.6 million in stimulus money. This multi-phase project will enable Ticonderoga to comply with a consent order requiring the Town to create a long-term control plan for its sewer system and plant through 2014.



The Inspector General toured Ticonderoga's existing waste water system control plant, which is currently undergoing extensive renovations and improvements. Illustrated in the above photograph (above left) is a new overflow tank that is part of the phase one primary treatment upgrades, which was 85 percent complete. While inspecting the plant, investigators questioned AES Northeast project manager and Ticonderoga's plant superintendent about the project and ARRA compliance. For example, AES Northeast verified that the origin of the equipment purchased for installation as built in the United States and the AES site inspector examined the equipment and photographed it to confirm further that it is Buy American compliant. The Inspector General conducted similar examinations (see the photo above, right).

During the Ticonderoga inspection, the plant superintendent shared with the Inspector General a conversation he had with one of the contractors on the project who expressed his appreciation for the stimulus funding, without which his company would not have had any work thereby requiring the laying off of numerous employees. Another contractor expressed similar sentiments during the Inspector General's review of the Newcomb construction site.

The Town of Newcomb, located in the Adirondack Mountains, received approximately \$1.37 million in ARRA funds for the construction of a new wastewater collection and treatment system to replace its existing one, circa 1963. New York State DEC issued a consent order for Newcomb's effluent discharge, which impacts the water quality of the upper Hudson River. Newcomb is installing a new re-circulating sand filter system and effluent ultraviolet disinfection system. Construction of this project, a portion of which is depicted below to the left, was 45 percent complete, on schedule and under budget.



The fourth and final inspection conducted by the Inspector General was of treatment plant refurbishment and collection system upgrades in the Town of Schroon, located on Schroon Lake. The photograph on the right shows part of the new sewage line which runs behind several commercial and residential units on the Town's main street and adjacent to a small river. The Town's existing treatment plant is also under a DEC consent order. Over \$3.2 million in stimulus money is allowing Schroon to complete previous improvement projects, which had been halted due to lack of financing.

The Town Supervisor noted to the Inspector General the significance of this project: tourism comprises a large portion of Schroon’s economy and the Town’s population increases from 17,000 residents to over 45,000 in the summer. “The lake is key to our survival,” she averred, and therefore, any contamination of Schroon Lake would be cataclysmic. She characterized the ARRA funds as a “godsend” since it will not only enable the town to improve its waste treatment services, but it has also helped employ many local residents.

B. Buffalo and Niagara Water Projects



Buffalo, N.Y. Hamburg Drain Project

On August 23, 2010, the Inspector General visited an ARRA funded clean water site in Buffalo, New York. The \$19 million project, funded with approximately \$9.1 million of ARRA funds, is part of the redevelopment of Buffalo’s inner harbor and involves construction of a control facility to screen off debris and floatables in the Hamburg Drain. The Hamburg Drain, built around 1901, is a rectangular stone and concrete sewer roughly 16 feet wide and 10,000 feet long, which collects excess wet weather sewage materials and highway run off from 21 sewer regulators. Prior to the commencement of this project, the Hamburg Drain discharged directly into the Buffalo River and all floatable debris – plastic bottles, straws, cigarette butts, cans, leaves, wood and synthetic materials – washed into a commercial slip in the inner harbor waterfront resulting in objectionable odors, unsightly appearance and poor water quality.

As the Hamburg Drain and redevelopment of the inner harbor are both important, the Buffalo Sewer Authority proposed building a floatables-control facility that would use electric screens to collect the floatables and an aeration system to augment the oxygen levels in the water and improve water quality. The New York State Thruway Authority entered into an easement with BSA to provide the location for the facility: a piece of land adjacent to the existing Hamburg Drain, located under the Thruway, the Buffalo News building and the Memorial Auditorium.



The Inspector General met in the offices of the project engineer, Conestoga-Rover & Associates (CRA) and reviewed the engineer's estimates, RFP, bid tabulations and selection of the general contractor, Man O'Trees Inc. The engineer estimated a cost of \$16.5 million for the project. The Inspector General reviewed the M/WBE plan and submissions, and the Buy American certifications, which accompany all transmittals for payment. The Inspector General also visited the site and met with the on-site inspector. He had already performed a number of wage interviews and payroll certifications.

On August 24, 2010, the Inspector General visited the Niagara Falls Public Water Authority to review and discuss the ARRA-funded project to remove debris from the North Gorge Interceptor. The meeting included attorneys and engineers of the Niagara Falls Water Board, the project engineers of O'Brien & Gere, and representatives of EFC. Built in 1937, the North Gorge Interceptor is a rock tunnel through which approximately 5.3 million gallons of sewage water flows daily toward the North Gorge Pumping Stations where it is treated before its release into the Niagara River. Over time, the walls have deteriorated, and rock has fallen and obstructed the tunnel. ARRA created an opportunity to commence a much-needed project to remove rock buildup in the tunnel. The project required the construction of a bypass tunnel to enable contractors to enter the affected area through drains. (See photographs below).



Niagara Falls, N.Y. North Gorge Interceptor Project

The estimated project cost is \$10.9 million, \$5.4 million of which is ARRA funds. A majority of the project cost is the labor and trucking removal of rocks and debris in the

interceptor, the only supplies are those used to reinforce the walls. The project commenced in December 2009 and with a projected completion date of December 2010.

The Inspector General reviewed the RFP process and the selection of Yarussi Construction Inc. Yarussi Construction's bid was \$8,928,500, just 2 percent higher than the engineer's estimate and was within \$20,000 of the next lowest bidder. The Inspector General reviewed the M/WBE goals – which Yarussi had already met – Buy American compliance, and recent labor standards interviews conducted with workers. The Inspector General visited the project site and met with the engineer's inspector who is at the job site fulltime and responsible for the contract administration, including wage interviews and payroll certifications.

III. Other Activities

A. The Great Appliance Swap-Out Administered by NYSERDA

New York State Energy Research and Development Authority (NYSERDA) is eligible to receive \$18.7 million in ARRA funds to provide cash rebates to New York residents who purchase high-efficiency appliances. NYSERDA's plan for the State Energy Efficient Appliance Rebate Program, or the Great Appliance Swap Out, is administered by Lockheed Martin. Under the plan, the Great Appliance Swap Out program is expected to:

- Provide New York consumers who own their own appliances with rebates for purchasing certain energy-efficient refrigerators, clothes washers, freezers and dishwashers, and
- Offer a larger rebate to consumers who recycle their discarded appliances.

Depending upon the new appliance's degree of energy efficiency (i.e., ENERGY STAR or CEE rated), and whether the old one has been recycled, consumers can receive a rebate ranging from \$50 to \$555. The program publically began on February 12, 2010, and will continue until the depletion of ARRA funds.

The Inspector General recently investigated an allegation that a certain retail store submitted fraudulent applications in order to obtain appliance rebate money. While the complaint proved unfounded, the Inspector General also reviewed Lockheed Martin's protocols to identify fraudulent rebate applications. In general, Lockheed Martin employs three levels of scrutiny of rebate applications in its processing prior to releasing ARRA funds to the applicant. Lockheed Martin instructs its personnel at each level to look for patterns in check requests and for unusual invoices. Every submittal is examined for anything suspicious or irregular, and only original sales receipts are accepted. Staffers are to report to a supervisor anything that appears unusual, which will prompt further inquiry by Lockheed Martin managers and possible notification to the Stimulus Oversight Panel for investigation.

B. Inspector General Conducts Outreach with a Major Transportation Contractor

New York State expects to receive approximately \$1.12 billion in ARRA funds for transportation related projects. Over the next 10 years, the state is anticipating replacing all of its rustic guide rails, a major undertaking since that type of railing exists throughout the Adirondack Park and on the Taconic Parkway, just to name two major roadways. Therefore, the Inspector General met with executive of Elderlee, Inc, a diversified corporation specializing in the manufacture and construction of highway safety products. Elderlee's manufacturing operations are located in upstate New York and consist of steel fabrication, hot-dip galvanizing services, and sign manufacturing capabilities for both the highway and commercial markets. Elderlee's construction division specializes in the installation of highway guardrail, bridge rail, pedestrian rail, impact attenuators, traffic signs and overhead highway sign structures. Currently, Elderlee has numerous contracts with the state's Department of Transportation, many of which are ARRA funded.

The Inspector General discussed pro-active fraud prevention measures with Elderlee officials as part of the Inspector General's role in stimulus oversight. Some of the issues included bid rigging, bribery and kickbacks, and M/WBE utilization and compliance. Elderlee has been in business since the 1940s, and the long tenured executives with the company stressed the importance of maintaining the company's integrity. Elderlee stresses internal controls and its engineers who oversee their projects are instructed to report suspicious behavior and suspected fraud. The Stimulus Oversight Panel's brochures were provided to Elderlee so that the company has access to a resource to help its efforts in fraud prevents and an avenue to raise concerns of suspicious activities related to New York's transportation projects.

NEW YORK STATE OFFICE OF THE MEDICAID INSPECTOR GENERAL

The New York State Office of the Medicaid Inspector General (OMIG) has identified 197 enrolled Medicaid providers who received ARRA funds through the New York State Education Department (SED) for Supported Employment Services (SES). SES involves paid competitive employment in an integrated setting with ongoing support for individuals with the most severe disabilities. It is administered through SED's office of Vocational and Educational Services for Individuals with Disabilities (VESID).

During the last quarter, the OMIG conducted onsite reviews of targeted providers who received ARRA funding for SES programs. The primary focus of the reviews was on the systems and internal controls set up by SES vendor to identify and account for the ARRA funds allocated in each contract and that the proper reports were being filed on a timely basis with the appropriate state and federal authorities. The ARRA contracts, quarterly reports, vouchers, ledgers, client files as well as compliance requirements regarding workers compensation, hiring, and employee assistance programs were reviewed. It was found that in most cases SES vendors were unaware that their VESID contracts contained ARRA funds because these contracts had been in place for many years with no changes in funding. In addition, vendor personnel signing the contracts failed to fully review pertinent sections that referred to the ARRA funding. OMIG

Investigators impressed on vendor personnel the need to thoroughly review contracts and informed them of ARRA reporting requirements and resources where information could be found.

The Stimulus Oversight Panel met and interviewed personnel from SED's VESID program regarding the use of ARRA funds for their SES initiatives. SED's Fiscal Coordinator explained that after consulting with the Rehabilitation Services Administration (RSA) they were authorized to use ARRA funds for any of SED's Vocational Rehabilitation (VR) programs. SED chose to allocate the funds to SES because VESID contractors were already in compliance with federal guidelines that mirrored ARRA requirements. The Fiscal Coordinator further advised that SES vendors had received ARRA funds in order to maintain FY 2008-09 funding levels after SED's general fund allocation for FY 2009-10 was reduced. Therefore, SES vendors received no supplemental funding for their programs. Instead, ARRA funds were utilized to avoid any decrease in the level of services that would have occurred as a result of the general fund reduction. If ARRA funds had not been available, SED would have had to shift to an "Order of Selection" mode were only the most severely handicapped could be served resulting in fewer consumers benefitting from VESID programs.

OMIG will meet with SED fiscal managers in Albany to review, and/or verify reductions to their general fund as well as compliance with ARRA funding. In addition, OMIG personnel will continue to perform onsite visits.

THE NEW YORK STATE DIVISION OF HUMAN RIGHTS

The end of the quarter coincides with final work that will produce the first data tracking program, described in previous reports, that will enable New York State to measure compliance with civil rights laws by all contractors and subcontractors receiving government funds for both present stimulus and future state contracts. The ground breaking computer program will soon be ready for beta testing and is expected to be operational by end of calendar 2010, permitting the state to directly analyze ARRA-related employment and payrolls to determine if employment goals regarding race, gender, ethnicity and other protected classes are being achieved.

The program will also serve as the foundation for broader economic analysis to help measure attempts to direct ARRA funds to the most economically deprived sections of the state. This program can become a model for the other 49 states, as well as federal agencies, and will be a vital tool well beyond the tenure of the ARRA program in helping government measure civil rights compliance in all public works projects.

The Division serves as the State's centralized civil right monitoring unit under the Governor's Executive Order 31, paragraph 6. It has the responsibility to develop policies, procedures and practices for monitoring and reporting actions concerning ARRA programs, projects and funds by state agencies.

By meeting with representatives or obtaining information from all 26 state agencies that received ARRA grants, Human Rights found a wide range of interest in

enforcing the civil rights laws that mandate contractors and subcontractors receiving public works funds develop and execute anti-discriminatory hiring programs. The meetings unfortunately confirmed that many agencies were collecting no or minimal information regarding work force make-up and often relegated paper documents to sit in file cabinets without monitoring. The most frequent excuse was that collecting workforce information would put an undue strain on private contractors and result in diverting funds and fewer jobs. Most small businesses, however, either already collect such information as required under federal regulations or, as a part of accepting public monies, can reasonably do so.

Human Rights also discovered that several agencies were diligent in collecting, sorting and storing information and were looking to the Division and elsewhere for assistance in developing working programs. Most notably those agencies include the Department of Transportation (DOT), the Environmental Facilities Corporation (EFC) and the Department of Environmental Conservation (DEC). The challenge in assisting all agencies to meet their requirements is how to transfer that information from contractors and subcontractors into files that can be reviewed and analyzed.

Human Rights held a meeting in April 2010 in the State Capitol in which then ARRA "Czar" Timothy Gilchrist delivered a direct message from the Governor that civil rights compliance was a priority in using stimulus funds. Out of that meeting came an initial working group chaired by Human Rights that included technical personnel from the DOT, EFC and DEC, as well as program specialists from the New York Chief Information Officer/Office for Technology (CIO/OFT), which determined the initial program should utilize DOT data. DOT is one of the largest recipients of ARRA funds, \$1.1 billion, or approximately 3.4 percent of the state total. DOT maintains the required information - race, gender and ethnicity of thousands of employees of private contractors and subcontractors working on ARRA funded projects - although much of that information is not stored in a central database.

Human Rights, CIO/OFT and DOT are developing a methodology for centralizing the necessary records and using a special platform built by CIO/OFT that will accept the DOT data, automatically conduct analyses and produce maps to show successes and deficiencies in getting the benefits of ARRA and other funds to those communities in need. Human Rights also met with and sought input from local and national advocates and other organizations with ideas and expertise in collecting and using such information.

The reporting process, which is similar to the kind of information that government contractors must keep and make available for other purposes, has been designed for minimal difficulty or burden on operations. The system will report, for specific projects and contracts, information about employees in classes protected from discrimination and prevailing wages paid to these workers. Both the funding agency and Human Rights can monitor compliance with the civil rights laws by comparing employment of workers in protected classes with goals applicable under specific funding grants, and by comparing workforce information to labor availability in the geographic area or other appropriate labor pools. Variances identified by these comparisons will be investigated for possible

discrimination or non-compliance with civil rights laws. Both the funding agency and Human Rights will be able to map data about contracts, grants and employment so that they can determine whether communities are receiving the benefits of public expenditures on a non-discriminatory basis. Although designed initially for stimulus-funded projects and contracts, this system can be used by all state agencies that contract or fund projects resulting in employment.

The working group expects to complete the first tests in October, identify and fix the computer problems, and then distribute templates to the 25 other ARRA recipient agencies. Because the information is similar to required federal forms, we do not believe it will be overly burdensome for contractors and subs to supply such information.

This program is being developed as efficiently as possible, as this work is all being done in-house by the agencies without additional expenditures.

METROPOLITAN TRANSPORTATION AUTHORITY INSPECTOR GENERAL

A. The MTA IG's Role as Independent Oversight of the MTA

Kickoff Meetings

The MTA IG's office attends construction kickoff meetings on all ARRA projects. At those meetings, contractors are advised, in the presence of MTA staff, that making a false statement on a DBE Progress Report or certified payroll is a federal felony. Contractors are also advised that the MTA IG is working closely with the USDOT OIG on these matters, and reports and change orders are reviewed. To date, the agency has attended 13 kickoff meetings, 1 qualification hearing and 96 progress meetings.

Site Visit Program

The MTA IG's Construction Fraud Unit has begun a site inspection program which involves unannounced construction site visits designed to ensure compliance with legal and contractual obligations including appropriate materials, safety obligations, prevailing wage compliance, use of identified subcontractors and site security. Workers are interviewed on site to determine the identity of their employers, whether they are being paid the prevailing wage and whether they have the proper identification and track training cards. Materials are also examined to determine the name of the companies they are shipped to in order to ensure that the proper contractors are actually performing the work. Six site visits have been conducted in 2010.

Stimulus Reviews & Analyses

- The MTA IG conducts targeted reviews and analyses of MTA stimulus projects for fraud, waste and abuse, performing risk assessments in order to identify areas of high risk as well as identifying potential fraud indicators. The results are

followed up by the MTA IG's Investigations and Audit Divisions where appropriate.

- The MTA IG tracks and reviews the results of MTA's own Auditor General's Reports on stimulus expenditures and job creation, again identifying "red flags" and areas of high risk, referring appropriate matters to the MTA IG's investigations division for follow-up.

Miscellaneous

The MTA IG focuses on compliance and federal requirements regarding:

- DBE targets/goals
- Prevailing wages for laborers, mechanics, and truckers
- Transparency and accountability requirements
- Provide general oversight
- Review Good Faith effort requirements by contractors to ensure DBE's are given the opportunity to perform the work and are not used as pass-throughs.

APPENDIX A

David A. Paterson
Governor



Brian E. Lawlor
Commissioner

New York State Division of Housing and Community Renewal
25 Beaver Street
New York, NY 10004

September 8, 2010

Re: WAP-ARRA Contract #C091020 for 2010-2011
Window Replacement Bid, Lindsay Park Housing Complex

Dear Contractors:

The New York State Division of Housing and Community Renewal (DHCR) administers the Weatherization Assistance Program (WAP) in New York State, contracting with subgrantees to perform WAP services in accordance with its policies and procedures. The program is subject to federal procurement rules (10 CFR Part 600) that require us to follow competitive bidding practices.

The above-referenced bid was conducted by the Community Environmental Center, Inc. (CECI), on behalf of a DHCR approved joint venture which included CECI, ODA Community Development Corp and Sunset Park Redevelopment Corp., all subgrantees of DHCR. The bid was awarded based on CECI's bid evaluation, and by a July 12, 2010 memorandum from CECI, all participants in the bid process were informed that ASK Construction had been awarded the bid as the lowest bidder.

Subsequently, inquiries to DHCR and to the New York State Inspector General's Office (IG) raised questions as to the bid process conducted by CECI, including, among other things, the determination of the low bidder and the specification requiring aluminum windows. The reviews conducted in response to these inquiries have indicated that CECI did not properly follow the DHCR's policies and procedures regarding procurement, and that the evaluation of the bids involved flaws that fundamentally affected the bid award.

The reviews indicated that CECI did not disclose in advance of the bid the formula that would be used to determine the low bidder. Thus, while the bid listed approximately 34 items on which prices were requested, the final selection was based on only nine of those items. Furthermore, CECI used different formulas for its initial and final evaluations.

Court cases make clear that the exact basis on which the contract will be awarded must be conveyed to prospective bidders in precise terms, in advance of bidding, so that bidders will be enabled to make an intelligent evaluation and bid, and so that possible favoritism may be avoided. Browning-Ferris Industries v. City of Lackawanna, 204 A.D.2d 1047, 612 N.Y.S.2d 732 (4th Dept. 1994); Progressive Dietary Consultants v. Wyoming County, 90 A.D.2d 214, 457

Web Site: www.nysdhcr.gov
Email address: dhcrinfo@nysdhcr.gov

N.Y.S.2d 159 (4th Dept. 1982); Suffolk Roadways v. Minuse, 19 A.D.2d 888, 244 N.Y.S.2d 651 (2nd Dept. 1963). This was not the case with respect to this bid.

Accordingly, DHCR has no choice but to declare the above-referenced bid null and void, and to set aside the bid award.

There will be a re-bid, in which all parties on the bidder's list will be given another opportunity to submit a bid for this project. Prior to the new bid solicitation, the bid package will be reviewed in its entirety, including the criteria for award and the materials specifications. You will be informed of specific details of the re-bid shortly.

Be advised that this letter is being sent to you because your company appears on the windows bidder's list, whether or not you actually submitted a bid in the afore-mentioned matter.

Thank you.

Very truly yours,



Daniel Henkin
Director,
Compliance Monitoring Unit

cc: Richard Cherry, Executive Director, Community Environmental Center, Inc.
Yehuda Turner, Executive Director, ODA Community Development Corp.
Gary Brown, Executive Director, Sunset Park Redevelopment Corp.
Greg Watson
Tom Carey
Contractors: Westside Windows, Ecker Window Corp., ASK Construction, Real Quality Windows, Tempest Windows, Tower General Construction, Regal Construction, Yes Contracting, Energy Pro Insulation, American Architectural, Continental Glass Systems, Paramount Fabrication Corp., Earthfirst Development Corp., Chards Diversified International, New York Windows and Doors, City View Alterations, Sheldorado Aluminum Products, Ross Window Corp., Northeast Windows, Construction Science Corp., F. A. Alpine Window Mfg., Accolade Construction, Ajet Enterprise, Zillico Construction, Empire Supply Co., R & R Lumber, Certified Lumber, Aviv Glass and Mirror

APPENDIX B



STATE OF NEW YORK OFFICE OF THE STATE INSPECTOR GENERAL **Final Report** **October 12, 2010**

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General, serving in the capacity as chair of the Stimulus Oversight Panel, found significant bidding irregularities by the Community Action Commission to Help the Economy, Inc. (CACHE), a Sullivan County-based community action group. CACHE had received funds from the American Recovery and Reinvestment Act of 2009 (ARRA) pursuant to a grant contract with the New York State Division of Housing and Community Renewal (DHCR). The Inspector General uncovered evidence which strongly suggests that CACHE's Director of Weatherization, Jimmy Crawley, improperly steered four contracts, including one funded by ARRA, to EVS Burner Services, a sole proprietorship based in Monticello, New York, specializing in home heating unit installation and repair.

The Inspector General has provided a copy of this report to the New York State Attorney General's Office for consideration of criminal charges. Additionally, the Inspector General recommends that DHCR provide expansive procurement training to employees of CACHE, as well as to similar not-for-profit agencies receiving state and ARRA funding. DHCR should also review its policy and procedure manual to ensure that clear, detailed guidance is provided to these agencies conducting competitive bidding.

The Inspector General also established that CACHE lacked adequate inventory controls over supplies and equipment purchased with ARRA and state funds intended for its Weatherization Assistance Program. While auditors with DHCR were well aware of these deficiencies, corrective action was minimal and inadequate to address the problems. The Inspector General, therefore, recommends that DHCR conduct training and provide agencies with proper protocols to reasonably account for weatherization-related property. Furthermore, DHCR should exercise greater oversight of agencies' inventory, and where deficiencies are identified, recoup monies for missing property and enforce stricter internal controls by withholding funds from those agencies that fail to remedy problems.

The Inspector General further discovered that CACHE failed to abide by prevailing wage requirements of ARRA by paying certain employees less than the established wage rate on ARRA-funded weatherization projects. The Inspector General

has referred this matter to the U.S. Department of Labor for its review and appropriate action.

ALLEGATION

In June 2009, the Inspector General received an allegation that CACHE Weatherization Director Jimmy Crawley steered a furnace installation contract to EVS Burner Service, a company owned by Crawley's friend, Harry Dennis.

SUMMARY OF INVESTIGATION

Background

Under the American Recovery and Reinvestment Act of 2009 (ARRA), New York State has been provided with \$32.4 billion in federal funding for infrastructure improvements, education, healthcare and alternative energy, plus much more. On July 9, 2009, Governor David A. Paterson ordered the creation of a Stimulus Oversight Panel to ensure that the over \$32 billion of federal funds provided to New York State under ARRA are utilized with transparency and accountability. The Panel is chaired by New York State Inspector General Joseph Fisch and includes state Division of Human Rights Commissioner Galen Kirkland, Metropolitan Transportation Authority Inspector General Barry Kluger and state Medicaid Inspector General James Sheehan. With the signing of Executive Order No. 31 on November 25, 2009, the Panel was formalized and provided expanded jurisdiction over state agencies receiving ARRA funds. The Executive Order charges the Panel with "the prevention and detection of waste, fraud, abuse and mismanagement of ARRA funds, the promotion of transparency and openness," and the "distribut[ion] [of ARRA funds] in an equitable, fair and non-discriminatory manner."

DHCR has been allotted \$394 million of ARRA funds, and distributes these funds through grants as a supplement to its existing Weatherization Assistance Program. This program assists income-eligible families and individuals by reducing their heating/cooling costs and improving the safety of their homes through energy efficient measures. Applications for assistance under the program are made to local service providers under contract with DHCR. Upon approval, the local service provider will conduct a comprehensive professional analysis of the applicant's home, and based on that analysis and the funds available will install or cause to have installed, weatherization measures which have been determined to be the most cost-effective in reducing the applicant's energy consumption.

Significant Bidding Irregularities at CACHE

Community Action Commission to Help the Economy, Inc. (CACHE), located in Liberty, Sullivan County, is a not-for-profit corporation whose stated mission is to "address emergency needs of households [and] individuals and promote self-based concept which focuses on empowerment through accessing resources within the family structure and the community." In addition to its Weatherization Assistance Program and other types of assistance it provides to residents of Sullivan County, CACHE offers

programs for victims of domestic violence and a day care center. CACHE is scheduled to receive upwards of \$1.6 million in ARRA funds in addition to its annual receipt of approximately \$500,000 in regular Weatherization Assistance Program funds.

The Inspector General found significant bidding irregularities during four of CACHE's procurements for weatherization-related goods and services. CACHE's weatherization staff performs most of the work to improve an income-eligible person's home heating and cooling efficiency. However, furnace installation and maintenance is typically subcontracted to a private company. DHCR requires a competitive bidding process in the award of these contracts. CACHE Weatherization Director Crawley oversees the Request for Proposals (RFP), bid opening and review, and is required to award contracts to the lowest responsible bidder.

The Inspector General uncovered evidence which strongly suggests that Crawley improperly steered four contracts to EVS Burner Services (EVS), including an ARRA-funded contract to clean and tune gas and oil furnaces. Specifically, the Inspector General found significant flaws in at least four of CACHE's weatherization procurements overseen by Crawley – each one resulting in Crawley awarding the contract to EVS.

EVS is a sole proprietorship owned and operated by Harry Dennis III, out of his residence in Monticello. When interviewed by the Inspector General, Dennis testified under oath that after he submitted his bids, he would then receive a call from Crawley telling him to “check his math.” Dennis stated that he interpreted Crawley's direction as Crawley's signal to him to alter the bid to a lower bid price. Dennis explained: “If they're [Crawley and CACHE] saying my math is wrong, that means get it down a little bit. I'm not dumb; I'm not naive.” When asked how well he knew Crawley, EVS's Harry Dennis replied, “Well enough.” Dennis explained that he did not socialize with Crawley, and he had been to Crawley's house only once when Dennis performed complimentary service work on Crawley's broken furnace during a winter night in 2010. That instance, however, was not the first time Dennis performed a furnace repair at no charge for Crawley: in the spring or summer of 2009, Dennis fixed an elderly woman's boiler at Crawley's request. Crawley urged Dennis not to charge CACHE and instead write a letter to CACHE Executive Director Gladys Walker, advising her that he had donated his time. Shortly thereafter Dennis (EVS) was awarded the first of four suspicious contracts, each of which is discussed below.

(1) First Suspect Contract Award

On July 1, 2009, CACHE mailed to EVS as well as other contractors, and publically announced, a request for proposals (RFP) for the contract to perform all heating unit maintenance for a one-year period as part of CACHE's Weatherization Assistance Program. Bids were sought for two separate contracts: one for service on gas burning units and the other for oil fired units. The winner of this contract would have the exclusive right to perform all of the “clean and tune” of oil or gas furnaces in homes receiving weatherization upgrades performed by CACHE. The RFP required that all bids be received by CACHE by July 14, 2009.

As for the bids, one company bid that it would charge the same amount, \$189.95, for oil and gas burning units. Another firm bid \$155.97 to perform maintenance work on oil burners, but declined to bid on the gas furnace work. Harry Dennis of EVS bid \$205.00 for oil services and \$130.00 for gas services. On July 14, CACHE held a bid opening and review meeting led by Crawley. Rather than awarding the contracts to the lowest bidders – the oil service work to the company that bid \$155.97, and the gas work to EVS at \$130.00 – EVS was inexplicably awarded both contracts. However, EVS’s bid for the oil work was \$205.00, higher than both competing bids - \$155.97 and \$189.95, respectively.

7-14-09
BID SUMMARY

REQUIREMENTS: Heating System Clean and Tune- Gas Fired Units
Heating System Clean and Tune- Oil Fired Units

BID CLOSE DATE /TIME: 14,JULY 2009, 10:47AM
BID OPENING DATE/TIME: 14JULY 2008,10:30AM

PROPOSERS: C&C PLUMBING AND HEATING
EVS OIL BURNER SERVICES
COUNTY PETROLEUM

1) C&C PLUMBING BID CLEAN AND TUNE **OIL \$189.95 GAS \$189.95**
2) EVS BURNER SERVICES CLEAN AND TUNE **OIL \$205.00 GAS \$130.00**
3) COUNTY PETROLEUM CLEAN AND TUNE **OIL 155.97 GAS 0**

NOTICE TO BIDDER: This bid summary represents the bid prices received by C.A.C.H.E.Inc.Only. Successful bidder has been determined. The successful bidder will be **EVS BURNER SERVICES** FOR OIL @ \$205.00 AND **EVS BURNER SERVICES** FOR GAS@ \$130.00

Thank you for participating in the bidding process!
Jimmy B Crawley
Wx-Director

When queried by the Inspector General as to why the contractor who bid \$155.97 was not awarded the oil clean and tune contract, Crawley claimed that the company previously had been “banned” by CACHE. Based on this assertion, the Inspector General retrieved CACHE files regarding this company and discovered two letters from 2003 to this company from CACHE’s Executive Director complaining about workmanship, but neither letter even suggests that the company had been banned from bidding on CACHE weatherization projects. Moreover, if true, the basis for not awarding the contract to the lowest bidder clearly should have documented in the official procurement file as required by DHCR’s weatherization policy manual and federal regulations (10 CFR Part 600): “[F]ailure to use a low bidder must be based on documentation that the bidder is not responsible or has not been responsive....” However, CACHE’s procurement file contains no indication of that purported justification for not awarding the contract to the company.

Telephone records reveal three calls between Dennis and Crawley following CACHE's bid opening meeting and the award of both contracts to EVS. Following the award to EVS, CACHE received a letter from Dennis revising the portion of his bid for the oil contract from \$205.00 per unit to \$170.00 per unit, which was lower than the remaining bid of \$189.95. Dennis's letter to CACHE, dated only July 2009, is reproduced below.

July, 2009

CACHE Inc.
Attn: Jimmy Crawley
63 South Main Street
Liberty, NY 12754

To Whom It May Concern:

I, Harry Dennis owner of EVS Burner Service appreciate the oil contract; but due to a clerical error the price of \$205.00 per cleaning shall be \$170.00 for each clean and tune. Once again I appreciate the contract, and your patience.

Thank You



Harry Dennis

Suspiciously, the Inspector General discovered in Crawley's file on this contract what appears to be a rough draft or template of the very same letter bearing Dennis's signature (see below).

To whom it may concern

I Harry Dennis owner of EVS Burner Service appreciate the oil contract; but due to a clerical error the price of \$205.00 per cleaning shall be \$170.00 for each clean and tune. Once again I appreciate the contract, and your patience.

Thank You

Harry Dennis

The Inspector General confronted Dennis with a copy of the unsigned draft letter discovered in Crawley's file; Dennis maintained that, despite the coincidence in similarity between the two letters, no one at CACHE wrote the letter for him that he signed.

Dennis admitted that the alteration of his bid was at Crawley's instigation and was not based upon a "clerical error." According to Dennis, Crawley called him and asked him, "Is your math correct?" Dennis testified that he then inquired as to what Crawley meant, and he was informed by Crawley, "Re-look at your bid that you had written up and just double-check your math." Dennis subsequently admitted that "saying my math is wrong ... means get it [the bid price] down a little bit." When asked again why he would drop the price of the work from \$205.00 to specifically \$170.00 after being awarded the bid, Dennis provided no plausible explanation, other than he was told by Crawley to double-check his math.

(2) Second Suspect Contract Award

On July 24, 2009, CACHE publically announced and mailed to certain contractors, including EVS, a RFP for a boiler replacement contract at a weatherization program participant's home. According to the RFP, any companies seeking the contract were required to submit a bid by 1:00 p.m. on August 10, 2009. One company submitted

a bid on July 31 for \$5,500. Cellular telephone records revealed that later that same day Crawley called Dennis three times. Over the next few days, five more telephone calls occurred between them. Most of these calls were not made on Crawley's CACHE-issued cell phone, but rather on his personal cell phone.

Subsequently, on August 7, CACHE received three other companies' bids in the amounts of \$6,690.19; \$7,775.00; and \$5,500.00. On the August 10th deadline, Crawley called Dennis at 7:52 in the morning, and at 8:36 a.m., Dennis phoned Crawley. About a half-hour after this second telephone call, Dennis submitted his bid proposal to CACHE in the amount of \$5,300.00, two hundred dollars lower than the next lowest bid. Notably, Dennis's bid is replete with white out and changes to his bid figures and lacked the requisite notarization. Nevertheless, after two bid review meetings held between Crawley and other CACHE employees, in addition to a few more telephone calls between Crawley and Dennis, on August 24, the contract was awarded to EVS.

(3) Third Suspect Contract Award

A few months later, on October 30, 2009, CACHE announced the RFP for an ARRA-funded clean and tune contract – a contract similar to the first contract discussed above, but financed with federal stimulus money instead of state funds. Bids were due on November 10, 2009. Telephone records reveal that between the announcement of the RFP (October 30) and the deadline for bids (November 10), Crawley and Dennis exchanged five telephone calls. On November 10 - the deadline for all bids and prior to the submission of EVS's bid - five more calls occurred between them.

CACHE received bids from three contractors for two ARRA clean and tune contracts: one for gas fired units and another for oil furnaces. One contractor bid \$244.00 per oil fired unit and \$220.00 per gas burning furnace. Another company bid \$143.30 per oil unit only, but did not submit a gas unit bid. EVS bid \$175.00 per oil unit and \$150.00 per gas fired unit.

The Inspector General examined all of the bids. Unlike the bids submitted by the other two contractors, EVS's bid contained crossed out figures and revised costs. The Inspector General questioned Dennis about the alterations to his bid. Dennis claimed the numbers were changed before the bid went to CACHE. When asked if anyone at CACHE had spoken to him or suggested to him to check his math on this bid submittal, Dennis thought for a moment, and said he could not recall if anyone had done so. Dennis acknowledged that Crawley could have called him to check his math on his ARRA clean and tune bid, but he was not certain. When queried as to why he altered pricing on items in his bid submittal, Dennis claimed that after initially completing the bid, he allegedly learned he could attain some of the items at a lower cost, and he blamed his inexperience in preparing bid prices for the errors.

Despite the obvious changes to the EVS bid, CACHE accepted it and held a bid opening and review meeting on November 10. The meeting lasted approximately 15 minutes before Crawley adjourned it without awarding the contracts. The next morning Dennis called Crawley. Despite not having the lowest bid for the oil fired unit service, on

November 19, Dennis was inexplicably awarded both oil and gas ARRA clean and tune contracts.

No explanation is indicated in CACHE's procurement file as to why the lower bidder of \$140.30 per oil unit was not awarded that portion of the contract instead of EVS. When asked to explain, Crawley merely insisted, contrary to all documentary evidence, that EVS was the lowest bidder.

(4) Fourth Suspect Contract Award

The last suspicious contract awarded to EVS was to replace the boiler unit at the Fairview Housing (Fairview) complex, a multi-unit apartment building located in Monticello, New York. Prior to the RFP, Dennis visited the Fairview and supplied Crawley with specification for the project (e.g., the heating capacity of the furnace necessary for the space) to be used in crafting the RFP. The manager of Fairview advised the Inspector General that Dennis met her at Fairview in April 2010, and she explained, "In my mind, I'm thinking oh good, so I didn't have to worry about him getting the bid for it ... because if you're writing up the bid specs you're not bidding on the project."

DHCR's Weatherization Assistance Program Policies and Procedure Manual clearly states, "In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements." Despite this policy and accepted procurement practices precluding any contractor who supplied the job specifications from bidding on the contract, Crawley permitted Dennis to bid.

When the Inspector General questioned Crawley about this breach of policy, he claimed, under oath, that all bidders went to Fairview to inspect it prior to bidding. The Inspector General then clarified that Dennis had gone to Fairview on April 24, 2010, to "spec out the job," two weeks prior to the publication of the CACHE RFP; Crawley, however, denied the possibility of such an occurrence, opining, "He might have been looking at it to see what he needs for the job." When asked how a bidder could possibly inspect a job two weeks before the issuance of the RFP, Crawley evaded the question by asking who else may have gone out to Fairview before the RFP was issued. The Inspector General repeated to Crawley that Dennis was the only contractor that went to Fairview to prepare specifications for the job. Regardless, Crawley continued to emphatically deny such,

On May 7, 2010, CACHE publicly issued the RFP and sent it to certain contractors, including EVS. All bids were due by 2:00 p.m. on May 17. Two bids were received by CACHE: one by EVS for \$6,280.00 and another by a competitor plumbing company for \$5,900.00. Both bids contained line items for materials and labor with a breakdown of costs in support of the total bid price.

During CACHE's bid opening and review meeting, it was apparent that both bids contained mathematical errors, i.e., the line item costs did not add up to the total listed on

the bids. The competitor's bid should have totaled \$5,700.94, while EVS's bid should have totaled \$5,810.00. DHCR's weatherization policy manual states that, "When the error/mistake is minor (informality or irregularity), waive it or allow the bidder to either verify or correct his/her bid; when the error/mistake is obvious or apparent, have the bidder verify the bid and correct the bid...."

CACHE afforded both contractors an opportunity to make the appropriate mathematical revisions. However, phone records reveal that between the adjournment of the bid review meeting and the receipt of the revised bids, Crawley used his personal cell phone to call Dennis three times. No record was found of any such calls to the competitor company.

The competitor's bid was faxed to CACHE on May 17, at 4:19 p.m. The competitor's revised bid contained no changes to the line item prices of the bid; it only included the corrected arithmetic, appropriately listing a total of \$5,700.94. Shortly thereafter EVS's bid was faxed to CACHE at 4:24 p.m., but included a new total of \$5,700.00, which reflected new line item prices for a total bid price \$110 less than the initial correctly totaled bid. Suspiciously, EVS's winning bid was just 94 cents lower than the competitor's losing bid. Below is a chart detailing the timing of the events leading up to the award of the Fairview to EVS.

Date	Time	Event	Bid Amount
5-03-10	8:22 AM 8:34 AM	Crawley personal cell makes two calls to Dennis (EVS Burner Service)	
5-07-10		Bid announced & mailed to contractors – bids due by 5-17-10 at 2:00 PM	
5-17-10	7:17 AM	CACHE office calls Dennis	
	11:09 AM	Competitor's bid #1 received	\$5,900.00
	11:35 AM	EVS bid #1 received	\$6,280.00
	2:00 PM	CACHE bid meeting #1 begins	
	2:07 PM	CACHE bid meeting # 1 adjourned	
	2:29 PM	Crawley personal cell call to Dennis	
	4:01 PM	Crawley personal cell call to Dennis	
	4:05 PM	Crawley personal cell call to Dennis	
	4:19 PM	Competitor's bid #2 received by CACHE Via Fax	\$5,700.94
	4:24 PM	EVS bid #2 received by CACHE Via Fax	\$5,700.00
5-18-10	10:00 AM	CACHE bid meeting #2 begins	
	10:08 AM	CACHE bid meeting #2 adjourned	
	3:53 PM	Crawley personal cell call to Dennis	
	4:02 PM	Crawley personal cell call to Dennis	

Compounding the dubious nature of the Fairview procurement, Crawley presented two bid documents purportedly from EVS which he identified to the Inspector General as being originals. The first submittal, dated May 18, 2010, bearing the signature of Harry Dennis, indicated a total price of \$6,280.00, with a red line through the total price and

\$5,700.00 written in red next to it. The second, with the same date and also bearing Harry Dennis's signature, indicated a total price of \$5,700.00, but included different line item prices in the bid.

When the Inspector General proffered these two bids to Dennis, he testified that Crawley had instructed him to sign two blank bid forms on May 18. Dennis denied inputting any numbers or totals on the bids and noted that the numbers were not in his handwriting. A comparison of these two bid submittals with others obtained from the CACHE contract file reveals subtle differences in the writing style. During an interview with the Inspector General, Crawley denied having Dennis sign two blank bid forms, stating, "Absolutely not, never happened. I have nothing to gain and nothing to lose." Yet Crawley offered no plausible explanation for the existence of four different bid documents from EVS.

Conclusions Regarding EVS

As detailed above, the evidence strongly supports that Crawley steered four of CACHE's weatherization-related contracts to Dennis. Both Dennis and Crawley denied bid rigging or kickbacks on any of the four suspect procurements. Crawley even denied any communication between Dennis and himself over his home telephone line, stating, "Maybe he called once, if that," an assertion belied by the telephone records. However, a CACHE employee advised the Inspector General that after concerns were raised internally about Crawley steering contracts to EVS, Crawley reportedly stated, "First of all, does anybody know how the bid things work? Because I'm allowed to change the numbers, and I can do what I want." This claim is supported by Dennis, who conceded, "I'm not a stupid man.... If they're saying my math is wrong, that means get it down a little bit." The evidence clearly established that with regard to these four procurements: the RFP was issued, communications occurred between Crawley and Dennis; Dennis altered his bids; and Crawley awarded the contracts to EVS.

The Inspector General will refer these four bid steering scenarios to the New York State Attorney General's Office for consideration of criminal charges, including perjury. Additionally, the Inspector General recommends that DHCR provide expansive procurement training to employees of CACHE, as well as to similar not-for-profit agencies receiving state and ARRA funding. DHCR should also review its policy and procedure manual to ensure that agencies conducting competitive bidding receive clear, detailed guidance.

CACHE's Inventory Deficiencies

The Inspector General also established that CACHE lacked adequate inventory controls over supplies and equipment purchased with ARRA and state funds intended for its weatherization program. CACHE maintains a warehouse in which both its regular weatherization program and ARRA-funded weatherization materials are housed.

In the fall of 2009, an inventory check of the warehouse's contents conducted by CACHE employees in the presence of a DHCR auditor resulted in a "write-off"⁴ of \$7,100.60 worth of materials. DHCR officials advised the Inspector General that even though DHCR had originally paid for those items, DHCR did not require CACHE to reimburse DHCR for the inventory that was written off. Rather, DHCR only required CACHE do a complete physical inventory and improve its internal controls. DHCR policy requires that the written-off items be disposed of in the presence of DHCR staff. Windows over five years old, outdated caulk, and other materials with an expired shelf life were discarded by CACHE in accordance with DHCR policy. DHCR staff noted that agencies the size of CACHE would normally only accrue between \$100 and \$400 in obsolete equipment each year.

During the first week of March 2010, CACHE completed another physical inventory in which another \$4,697.12 was written off. Due to the discovery of additional discrepancies, DHCR conducted its own inventory in early June of 2010. DHCR did not actually conduct the inventory count, but rather a DHCR auditor observed a CACHE employee perform such. While internal control weaknesses were found, the inventory "seemed to be pretty accurate," according to the DHCR auditor. However, the DHCR auditor could not, given the significant control weaknesses, reconcile the inventory count with the reported inventory in the agency's books as inputted by CACHE's finance officer.

DHCR recommended that CACHE conduct periodic spot checks of the inventory. DHCR also suggested someone of authority co-sign the material use sheets when materials are used, as currently only the person utilizing the items must sign. It was further recommended that CACHE combine its regular and ARRA weatherization inventories and that the agency should purchase all items with regular weatherization funds and then transfer the expense to ARRA as items are used for ARRA projects. CACHE has yet to adopt these recommendations, but DHCR's auditor does not view such as a non-compliance issue. "I can only suggest," I cannot force CACHE to implement the recommendations.

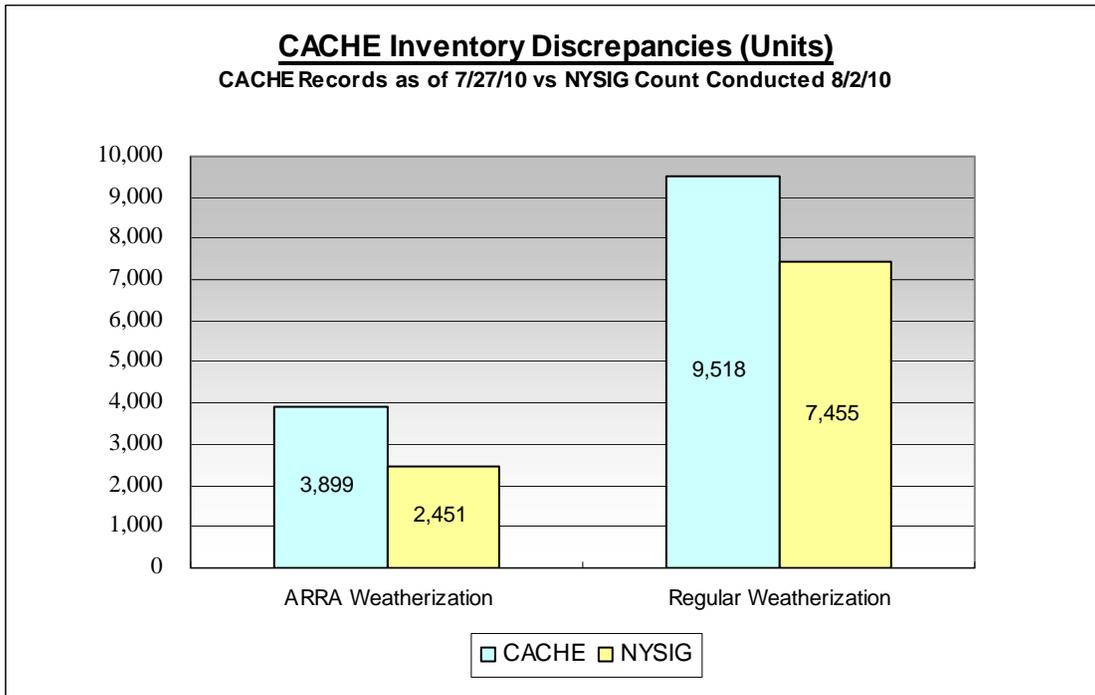
In August 2010, the Inspector General conducted an inventory of CACHE's regular Weatherization Assistance Program and ARRA-funded weatherization materials. A few days prior to conducting the physical count, the Inspector General obtained CACHE's weatherization inventory for both ARRA and regular weatherization. These files contained the most current representation of what items CACHE should have in its inventory stores.

In total, the Inspector General counted 82 different items of inventory reported in CACHE's inventory records, including 49 ARRA and 33 non-ARRA funded items. The Inspector General's physical count for 66, or 81 percent, of the items varied from what CACHE had reported in its inventory. Of the 66, the Inspector General's count was lower than CACHE's inventory for 49 items and greater for 17. The Inspector General

⁴ The term write-off describes a reduction in recognized value. In accounting terminology, it refers to recognition of the reduced or zero value of an asset.

was unable to locate in CACHE's inventory 906 units, with an estimated value of at least \$3,510. The Inspector General further counted an additional 165 units, with an estimated value of at least \$2,118, for items that were understated in CACHE's inventory.

In addition, the Inspector General located 15 items (estimated 116 units) that were not included in CACHE's inventory. Included among these items were 17 windows, 55 CFL bulbs, and 7 ventilation fans. Other items included pipe insulation and light fixtures. When incorporating these items, the Inspector General identified an estimated 281 units of inventory that were not reported in CACHE's inventory and could not locate 906 units that CACHE claimed to possess.



While some of the discrepancies may be excusable, such as items being used during the three days prior to the count, the magnitude of the disparity between the Inspector General's physical count of items and CACHE's records reflects extremely poor inventory controls at CACHE. Such poor controls increase the likelihood of items being stolen or used for unintended purposes.

As explained above, DHCR was well aware of these deficiencies, yet corrective action was minimal and inadequate to address the problems. The Inspector General, therefore, recommends that DHCR conduct training and provide agencies with proper protocols to account for weatherization-related property. Furthermore, DHCR should exercise greater oversight of agencies' inventory, and where deficiencies are identified, recoup monies for missing property and enforce stricter internal controls by withholding funds from those agencies that fail to remedy problems.

CACHE's Failure to Abide by ARRA's Prevailing Wage Requirements

During the course of the investigation, the Inspector General discovered that CACHE failed to comply with the prevailing wage requirements of ARRA by paying certain employees less than the established wage rate on ARRA-funded weatherization projects.

The federal Davis-Bacon Act provides that locally prevailing wages and fringe benefits must be paid to laborers and mechanics employed on federally funded contracts exceeding \$2,000 that may involve construction, alteration, maintenance or repair.⁵ ARRA Section 1606 requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Simply put, all programs or activities funded by ARRA and meeting the Davis-Bacon criteria will be subject to federal prevailing wage requirements.

Consequently, effective March 29, 2010, CACHE's weatherization crew working in Sullivan County were required to earn a gross salary of at least \$10 per hour plus an additional \$3.93 per hour in salary or agency paid benefits.⁶ Prior to that date, the prevailing rate was only \$10 per hour.⁷ CACHE's weatherization crew supervisor reported to the Inspector General that CACHE had designated a two-man ARRA and a two-man regular weatherization crew, but they all work together on both ARRA and non-ARRA funded jobs. However, he added that the regular weatherization staff members were not paid the higher prevailing wage amount even though they conducted the same work on ARRA-funded projects as CACHE's ARRA crew members.

The Inspector General analyzed the payroll for all CACHE weatherization crew to determine whether any were not paid the applicable prevailing wage for ARRA weatherization work. The analysis was broken into two components: (i) a comparison of rates paid for reported ARRA work expensed to CACHE's ARRA weatherization contract, and (ii) a comparison of rates paid for unreported ARRA work charged to CACHE's regular weatherization contract. The latter entailed comparing material use sheets for weatherization jobs to CACHE's payroll and prevailing wage rates.

The Inspector General determined that CACHE failed to comply with prevailing wage requirements by paying six weatherization employees hourly wages below the applicable prevailing rate. For three of the six employees, CACHE expensed the payroll costs to its ARRA weatherization contract yet did not pay the appropriate hourly wages. For three other employees, CACHE expensed the payroll costs to its regular (non-ARRA)

⁵ 40 U.S.C. §§ 276a - 276a-7.

⁶ As per U.S. Department of Labor Decision Number S2009-NY-001, issued December 11, 2009, and effective March 29, 2010, according to the U.S. Department of Labor.

⁷ As per U.S. Department of Labor Decision Number 2009-NY-001, issued September 3, 2009. No specific rate existed prior to September 3, 2009; however, all CACHE payroll for ARRA occurred after September 3, 2009.

weatherization contract, which is not subject to prevailing wage requirements, even though other CACHE records indicate these employees actually worked on ARRA weatherization projects.

The Inspector General estimated the above-referenced employees were underpaid a total of nearly \$2,200 since the beginning of CACHE's ARRA weatherization contract. This amount consists of \$1,459 in underpayments for ARRA work that CACHE allocated to its ARRA contract and \$736 in underpayments for ARRA work allocated to its regular weatherization contract.

CACHE payroll records indicated two employees were compensated for at least part of the amount they were underpaid, subsequent to their employment at CACHE ending. These employees received payments on May 12, and June 28, 2010 for ARRA "benefit pay" amounting to \$3.93 per hour for a portion of the hours they had worked on ARRA for which they were originally paid only \$10 per hour. However, neither received "benefit pay" compensation for all ARRA work. Specifically, one CACHE crew member was only compensated for 161.25 of the 191.75 hours CACHE reported he worked on ARRA, while another was only paid for 73.25 of 113.25 such hours.

The Inspector General has referred this matter to the U.S. Department of Labor for its review and appropriate action.

FINDINGS AND RECOMMENDATIONS

The Inspector General found significant bidding irregularities by CACHE, a recipient of federal stimulus or ARRA funds pursuant to a grant contract with DHCR. Furthermore, the evidence strongly suggests that CACHE's Director of Weatherization, Jimmy Crawley, improperly steered four contracts to EVS Burner Services, including an ARRA-funded contract to clean and tune gas and oil furnaces. The Inspector General has provided copy of this report to the New York State Attorney General's Office for review and consideration of criminal charges, including perjury. Additionally, the Inspector General recommends that DHCR provide expansive procurement training to employees of CACHE, as well as to similar not-for-profit agencies receiving state and ARRA funding. DHCR should also review its policy and procedure manual to ensure that clear, detailed guidance is provided to these agencies conducting competitive bidding.

The Inspector General also established that CACHE lacked adequate inventory controls over supplies and equipment purchased with ARRA and state funds intended for its weatherization program. While DHCR auditors were well aware of these deficiencies, corrective action was minimal and inadequate to address the problems. The Inspector General, therefore, recommends that DHCR conduct training and provide agencies with proper protocols to reasonably account for weatherization-related property. Furthermore, DHCR should exercise greater oversight of agencies' inventory, and where deficiencies are identified, recoup monies for missing property and enforce stricter internal controls by withholding funds from those agencies that fail to remedy problems.

The Inspector General further discovered that CACHE failed to comply with the prevailing wage requirements of ARRA by paying certain employees less than the established wage rate on ARRA-funded weatherization projects. The Inspector General has referred this matter to the U.S. Department of Labor for its review and appropriate action.

Given the significant deficiencies identified by the Inspector General, DHCR and other state agencies providing funding to CACHE should conduct an extensive review of its ARRA and state funded programs. DHCR and other state agencies should ensure that CACHE implements adequate internal controls and comply with applicable laws, regulations and policies.