GH's Comments on the Draft Report

Response of Grace Hill Settlement House

To Draft Report

of

Office of Inspector General
U.S. Environmental Protection Agency

on

Examination of Costs Claimed Under American Recovery and Reinvestment Act Cooperative Agreement 2A-97706701 Awarded to Grace Hill Settlement House, St. Louis, Missouri, Dated April 17, 2013.

Project No. OA-FY12-0258

REDACTED VERSION FOR PUBLIC RELEASE

The full version of this appendix contained sensitive information. This is a redacted version of that appendix, which means the sensitive information has been removed. The redactions are clearly identified in the appendix.

Executive Summary of
Response of Grace Hill Settlement House to Draft Report of
Examination of Costs Under Cooperative Agreement 2A-97706701

In this response to the Draft Report of Examination of Costs under Cooperative Agreement 2A-97706701 (CA), Grace Hill Settlement House (Grace Hill) shows that:

1. Grace Hill exceeded the emissions objective of the CA as defined in the original approved Work Plan for the Project.

2. The Contract prices Grace Hill paid were fair and reasonable, based on competition and cost and price analysis consistent with 40 CFR §30.43 or §30.45

3. Grace Hill substantially met the contract administration requirements of 40 CFR §30.47 using its Program Manager's Contract Manager spreadsheet to manage vendor invoices and payments and through its Close Out documentation.

4. As acknowledged, the $3,072 of questioned costs were not material, and the limited costs questioned were allocable and reasonable in amount, and not expressly disallowed.

5. The Personnel Costs and Fringe Benefits Grace Hill incurred for the Project are shown, in larger part, to "represent actual activities performed for the CA."

6. Excepting one ($35,098) and possibly a second ($9,878) cash draw arising from inadvertent accounting errors, which Grace Hill had corrected so there was no net overdraw, Grace Hill's draws credited the cash match payments actually in issue in a manner that was as timely as administratively feasible.

As a result, except with respect to a limited amount of Personnel Costs and Fringe Benefits which were a benefit that was provided to the Project, but for which documentation is not readily available, no recovery is necessary or appropriate.

Grace Hill, which had adopted compliant policies and procedures in 2009 and was in the process of strengthening its management and implementation of those policies and procedures at the outset of the Project now has:

- Further enhanced its policies and procedures and their implementation, addressing all of the questions in the Draft Report.

- Implemented a compliant electronic timekeeping and activity reporting system.

- Strengthened its management, including a new Chief Financial Officer and a Contract Administration Manager.

- Strengthened its Board oversight, including having an Acting Chair and a new Chair of the Finance/Audit Committee, and five more new directors, with significant management, accounting, finance, corporate governance, and government contracting experience.

Grace Hill's Financial management systems now are fully compliant with federal requirements.

See **OIG Response 1** in appendix B.

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I. Introduction

Grace Hill Settlement House (Grace Hill) welcomes the opportunity to respond to the Draft Attestation Report, "Examination of Costs Claimed Under American Recovery and Reinvestment Act Cooperative Agreement 2A-97706701 awarded to Grace Hill Settlement House, St. Louis, Missouri", provided to it on April 17, 2013

Background

Grace Hill Settlement House is a leading St. Louis philanthropic organization serving the disadvantaged in St. Louis. For over a century it has worked in challenging neighborhoods, providing critically needed services and an infrastructure for other agencies to deliver such services. Grace Hill is one of the largest providers of Head Start services in St. Louis, with an excellent record of improving the capabilities of the children it serves. It is nationally recognized for its Women's Career Center which teaches the disadvantaged how to start their own businesses. It is also nationally recognized for its "MORE Time Dollar Exchange" which provides a mechanism by which the disadvantaged can earn credits for services provided to others, and use those credits to "buy" services from others who are disadvantaged. Grace Hill also has the leading role in linking St. Louis Public Schools in north St. Louis to family services in the area, helped get a credit union facility established in the area, and is working with others to "rehab" houses in the area. But for Grace Hill many families in the poorer communities in St. Louis would lack opportunities to advance economically and socially.

National Clean Diesel Campaign

Although Grace Hill had just begun the process of strengthening its management personnel and upgrading its policies and procedures to continue its core community service work in 2009, the American Recovery and Reinvestment Act presented an opportunity to reduce diesel emissions and contribute to job preservation in its severely disadvantaged neighborhood. As contemplated in RFA Number EPA-ARRA-OAR-OTAQ-09-06 (at page 4), Grace Hill became one of the "diverse and unusual partners" that the National Clean Diesel Campaign urgently drew into the program "to address new engines and innovative programs to address the millions of diesel engines already in use." (Page 4) The Campaign sought projects that could "be commenced expeditiously." (Page 2) To that end, Grace Hill's then staff pursued and accepted the challenges presented by Cooperative Agreement 2A-97706701. As documented in this response, through the diligent efforts of its very limited staff and with the continuing consultation and close support of the EPA Region 7 Project Officer, Grace Hill substantially accomplished the objectives of the Cooperative Agreement, procuring the emissions Technologies (new vehicles, new engines and emissions reduction devices) that it provided or had retrofitted for fair and reasonable prices.

Challenging Project

The Project was challenging. The original Schedule, later extended to 21 months, was a 15 month schedule. As set out more fully in the Final Report, the original approved Project Workplan contemplated 739 equipment retrofits on 574 vehicles and a tugboat operated by nine Beneficiary public agencies and owners. Changes in available vehicles and verified technologies and their applications permitted the expansion of the scope of the finally approved Project Workplan to 16 Beneficiaries, 734 vehicles, tugboats, drill rigs, and other equipment (including one new truck) and 756 retrofits. Retrofit work was performed by five Partner vendors selected in two rounds of competition and evaluation that the changes made necessary, so that the work was performed under more than 16 distinct contract actions and technology subawards. (See pages 32-35)

Diesel Reduction Act (DERA) Grant Management Workshop

It is, however, fair to conclude that it was not until March 30-31, 2011, the dates on which the Project's six month extended schedule concluded, that Grace Hill's staff fully appreciated the EPA's expectations as to detailed and comprehensive documentation of the Project. Those were the dates on which Grace Hill's Program Manager attended the "Diesel Emissions Reduction Act (DERA) Grant Management Workshop" given by EPA Region 7 in Kansas City, Kansas. That workshop focused Grace Hill's staff on the documentation needed for the completion and Close Out of the agreement. This response demonstrates that, while that required a very significant effort, the staff, with increasing support from newer and more involved Grace Hill management, substantially accomplished it.

Grace Hill's Response

That difficult Close Out effort, along with Grace Hill's A-133 Audits for 2009, 2010 and 2011 (which presented issues Grace Hill also sought to address on an issue-by-issue basis while it was strengthening both its Board oversight and its management team), led Grace Hill in 2012 to request that Wipfli LLP, nationally recognized CPAs and Consultants to non-profit organizations, undertake a comprehensive financial procedures assessment to assure the success of Grace Hill's efforts to strengthen its policies and procedures. Wipfli reported its assessment in the Financial Procedures Assessment Results and Recommendations December 2012 enclosed with this report. (Exhibit 1) In making its assessment, Wipfli considered, among other matters, the preliminary findings of the Office of the Inspector General that had been provided to Grace Hill. In the course of that assessment, Grace Hill completed a significant revision of its Accounting and Financial Policies and Procedures Manual that became effective March 18, 2013 in all relevant respects. (Exhibit 2) (Limited matters related to Grace Hill's internal, not-for-profit operations remain to be incorporated.) In short, the Manual specifically addresses all of the questions raised in the Draft Report, as references to it throughout this response demonstrate.

The Wipfli report concludes (at page 1):

> "Based on our observation of procedures, review of forms, and discussion with the Vice President/Chief Financial Officer, it appears that policies and procedures are now in place to resolve those findings."

On May 28 and May 31, 2013, Grace Hill's Board was briefed on the draft findings in its outside auditor's OMB Circular A-133 Single Audit Report for the Year Ended December 31, 2012. No "material weakness" was identified.

Enhanced Board and Management Oversight

Among the improvements in the Financial Policies and Procedures Manual are the following provisions that assure compliance with award requirements:

- The provisions on Preparation and Review of Proposals (at page 26) to assure capability and readiness to perform awards.
- The provisions on post-award review to assure Compliance with Laws, Regulations, and Provisions of Awards (at pages 26-27).
- The provisions on Document Administration and Close Out of Federal Awards (at pages 27-28).

Perhaps, most importantly, these provisions begin with a proposal review by the Chief Financial Officer and require approval of a proposal by the President and the Board of Directors (or its designee).

Frank Thurman, Jr., became Acting Chair of the Board of Directors of Grace Hill in May, 2012. Utilizing his management experience as a Corporate Vice President responsible for the Commercial Truck Division of Enterprise Holdings, the largest car and truck rental company in the world, he led the implementation of procedures and practices that have greatly increased Board oversight over Grace Hill operations. As now reflected in the Financial Policies and Procedures Manual, all new contracts with the federal government or in new areas of endeavor for Grace Hill require Program, Finance/Audit, and Executive Committee approval. Mr. Thurman and the Chair of the Finance/Audit Committee now meet monthly with the Grace Hill Chief Executive Officer and the Chief Financial Officer for a detailed assessment of what has been accomplished over the past month and what needs to be accomplished in the next month to assure sound financial and program management of Grace Hill.

New directors with a wealth of experience in financial management and oversight, U.S. government contracting, and corporate governance also are contributing to the governance transformation of Grace Hill:

Paul Rode joined the Board and became Chair of the Finance/Audit Committee in March 2013. Mr. Rode is Vice President-Controller of Ralcorp, a $4 billion private brand cereal and processed food business recently acquired by ConAgra. He started his career at the Coopers & Lybrand accounting firm and served as manager of internal audit at the Harris Corporation and as Vice President of Internal Audit at the Brown-Forman Corporation.

Nancy Hamilton joined the Board in May, 2012. She is Deputy General Counsel at Monsanto Company, and is its chief legal counsel for corporate governance and mergers and acquisitions.

Carolyn Nichols joined the board in May 2012. She is a program manager for one of The Boeing Company's F-18 fighter aircraft programs. She provides a wealth of experience in assuring compliance with U.S. government contracting requirements.

John Sant, now retired, who was for 17 years Senior Vice President and General Counsel for McDonnell Douglas Corporation, one of the largest Defense Department contractors before its merger into The Boeing Company in 1997, joined the Board in May 2012. He is monitoring government contracting and accounting compliance at Grace Hill.

R. Randall Wang, a partner in Bryan Cave LLP in St. Louis, Missouri, joined the Board in May 2012 as well, bringing more than 25 years of experience in corporate finance and governance to Grace Hill. He serves on the Finance - Audit Committee.

Tom Santel, formerly an executive at Anheuser-Busch Incorporated, who also has a background in finance and accounting, joined the Board in May 2012.

<u>Strengthened Internal Management</u>

Over the period during which Grace Hill has worked through the challenges posed by the Project, Grace Hill has significantly strengthened its internal management.

Roderick Jones, Ed.D., MPA, came to Grace Hill in July 2008, to lead the revitalization of Grace Hill, as its President and Chief Executive Officer. As his resume (Exhibit 3) demonstrates, Dr. Jones most recently served as President and Chief Executive Officer of the Community Place of Greater Rochester, Inc.

Dr. Jones was joined next by Johanna R. Wharton, J.D., who now serves as Executive Vice President. She came to Grace Hill in 2010 as Vice President of Systems Advancement and Integration in March 2010 from Community Service at Provident, Inc., to support Dr. Jones in managing Grace Hill's operations. (Exhibit 4)

Benjamin C. Washington, CPA, joined Grace Hill in late 2011, completing the new executive management team for Grace Hill. He filled the critical gap caused by the departure of three chief financial officers in less than 5 years, including two who left during the period of the Project and its Closeout. Ben has the broad range of experience across public accounting, global corporations, and Not-For-Profits that was needed to help Dr. Jones and Johanna Wharton bring professional, financial discipline to Grace Hill's operations. (Exhibit 5)

Most recently, Kelly L. Laura came on board in February 2013 as Contract Administration Manager. She has the broad range of experience in providing compliance support and performance monitoring that will enable Grace Hill management to continue to assure that the policies and procedures it has instituted are regularly followed. (Exhibit 6)

In addition to overseeing programs and conducting training, management is developing a set of Standard Operating Procedures, in effect desk books, to assure that key policies and procedures, such as the Purchasing Policies and Procedures (at pages 51-61 of the Manual) are fully and routinely implemented. The most recently added Contract Administration Manager, is charged, among other things, with reviewing the documentation of key compliance requirements and the maintenance of required records and files (as called for at pgs 26-28 of the Manual), including the required procurement contract files (as called for at pages 56-58 of the Manual).

Response to Draft Report

This response is presented in the same order as the Draft Report. Following are Grace Hill's responses to the draft findings in Chapters 4 through 7 of the Draft Report.

See **OIG Response 2** in appendix B.

II. Detailed Response to Chapter 4: Grace Hill's Financial Management Substantially Met Federal Standards

Contract Prices for Direct Fire Heaters on School Buses Were Fair and Reasonable

The contract price for the five contracts for the installation of direct fire heaters (DFH's) on 541 school buses was based, contrary to the assertion in the Draft Report, on a free and open competition. The completed procurement processes resulted in the payment of no more than fair and reasonable prices for the DFH's.

Grace Hill's procurement policies and procedures complied with federal standards as the Draft Report acknowledges (at page 7). Following those procedures, and after undertaking a substantial effort to promote bidder interest, including a widely publicized kick-off event attended by the President of the Board of Aldermen of the City of St. Louis and many other officials, potential Project partner vendors and Beneficiaries, the Grace Hill staff conducted a free and open competition to obtain the bids or offers that were "most advantageous..., price, quality and other factors considered", including the most advantageous technology and price, for the two sizes of buses included, large and small. Contrary to the intimation of the Draft Report, that competition produced multiple bids that confirmed that the tentatively determined, most advantageous technology (the Webasto TSL17) was offered by the lowest bidder (Bidder A) at the lowest price [redacted]

Two developments ensued. First, the lead Beneficiary bus owner determined that a safer and more efficacious installation of the Webasto TSL17 technology required installation of a flame resistant box, a roll-over switch, and a timer to permit driver warm up of buses while waiting for children. The winning bidder (A) priced that improved installation, including the DFH's, to Grace Hill at [redacted]. That plainly continued to beat the [redacted] price of the competing Espar technology offered by a second bidder (Bidder B) that the Beneficiary had determined it did not want and the [redacted] price for the Webasto TSL17 (without the additional features) from another, late bidder (Bidder C). Grace Hill's staff concluded that further competition was not "practical" in the context of the schedule pressure that it understood that it was under to place contracts for the Project, the limited nature of the specifically priced modifications, and the resulting lowest price. While Grace Hill acknowledges that its procedures did not then specifically provide for such a judgment with appropriate management review, and that the pricing of the limited additional features could have been better documented, as it now would be, that was a proper determination under both 40 C.F.R. 30.45 and 30.47.

The second unanticipated development was that the low bidder (A) had won so much work (including the retrofit of 386 large buses initially awarded to it for DFH installations) that there were legitimate concerns, later confirmed to be genuine, as to whether it could perform the work on schedule. At the same time, the other timely bidder (B), solely for small buses, that was known to be an Espar technology dealer, won almost no business. Due to the same procedural and pricing considerations discussed in the preceding paragraph, all of which could have been better documented, as they would be today, Grace Hill's staff concluded that further competition was not "practical" and should not be undertaken if, for the 61 small buses also then to be done, the other bidder (B) would meet the lowest bid price, which the staff had concluded was a fair and reasonable price. The other bidder (B) agreed to meet the lowest bid price. That was a proper determination at least under 40 C.F.R. 30.45, based on sound analysis of the lowest bid price.

On or about January 26, 2010, after announcing the award to the low bidder (A), but before entering into the first contract with the bidder for DFH installations on February 22, 2010, the Grace Hill staff did in fact prepare a more than adequate price analysis (Exhibit 7). That analysis demonstrated that the Webasto TSL17 installation, as improved, was the most advantageous solution, at the lowest price even as improved.

Later in the Project, funds became available from underruns on other efforts to install DFH's on an additional 94 buses. Grace Hill staff sought and obtained approval through the Project Officer to add these to the budget, at the [redacted] price, bringing the total number of units approved at that price to 541. Although Grace Hill may not have correctly understood the communications it received from the Project Officer concerning how to deal with fleet changes or her approval authority, the Grace Hill staff reasonably understood that it did not have to re-compete additions to the bus fleets for the same verified technology at about the same cost. (Exhibits 8 and 9) In that context, with the winning bidder (A) lagging behind on the 386 buses already awarded to it, the staff awarded it only 34 of the additional buses, awarding 30 buses to the other bidder (B) and 30 buses to the earlier rejected, late bidder (C) when it too agreed to reduce its bid to match the lowest bidder. The staff concluded, consistent with its prior, adequate price analysis, that that [redacted] price was fair and reasonable. Contrary to the implication of the Draft Report, price analysis does not require demonstration of the lowest possible price.

While not as thoroughly or regularly documented as it would be today, Grace Hill believes and submits that [redacted] was and is a fair and reasonable price for the DFH installations.

Most significantly, it is indisputable that it was a free and open competition that established the [redacted] base, installed price for the Webasto TSL17.

The low bidder (A) subsequently has provided, on a confidential basis, proprietary pricing information available to it from its OEM dealer website. It shows that the price paid by Grace Hill for the Webasto TSL17 alone was approximately [redacted]. As shown in that separately submitted information (Exhibit 10), that is a more than [redacted] discount off the then [redacted] retail price; a more than [redacted] discount off the Major Fleet price; and a more than [redacted] discount off even the National Fleet price. The information confidentially provided also shows that the [redacted] price represented a more than [redacted] discount off the National Fleet price and labor for the entire installation.

What all those discounts meant, looked at from the bottom up, was, as confirmed in an email from the late bidder (C), which was added back for the last 30 buses:

> "Each vehicle required [redacted] hours of labor to install and travel time averaged an additional [redacted] minutes or [redacted] total hours per unit equating to [redacted] per hour."
>
> "Parts mark up was approximately [redacted]." (Exhibit 11) (Emphasis added.)

The second bidder (B) recently explained its pricing more fully:

> In regards to pricing during this project we . . . price this type of bid opportunities at a much reduced rate than <u>Any</u> other daily retail work activities. Our door rates for this type of project work is [redacted] per hour and a typical mark up for parts pricing in shop for most dealerships is [redacted]. This work due to the competitive sealed bid nature and the size of the project was greatly reduced. Our labor rate for this project was performed at [redacted] hours per bus not including travel time to

> the multiple install locations. This put our labor rate at around [redacted] per hour and with travel and miscellaneous items that were not covered under the bid such as heater hose, zip ties, self tapping screws, etc dropped our rate to below [redacted] per hour. The normal retail price of the heater kit alone for the school bus application was over [redacted] each. Due to the large quantity purchased we were able to buy and sell on each install at a mark up of roughly [redacted]. Since this activity we have not performed any retail work at such a highly discounted rate and do not plan to in the future due to the administrative labor intensive nature of these type of projects on the back end. We participated in this work at the time to keep our techs productive and employed during a slow economy. Our company has been busy since the latter part of 2010 and would not consider pulling resources out of our shops to perform work at these low margins today. (Exhibit 12) (Last emphasis added.)

That was fair and reasonable pricing.

See **OIG Response 3** in appendix B.

Procurements Met Cost and Price Analysis Requirements

The Draft Report asserts that Grace Hill awarded four contracts without documented cost or price analysis. Although the analyses by the Grace Hill staff would be more thoroughly and regularly documented today, the staff in fact made such analyses in substance and understood that their methodology had been approved. In one case, the methodology was suggested by the Project Officer. The prices for which Grace Hill contracted were, in all events, fair and reasonable.

Bryant T Tug Boat Engine Replacements

Main Engine

As the Draft Report notes, the first contract entailed replacement of a propulsion engine and an auxiliary engine in a tugboat. What it does not reflect is that this was difficult, essentially custom work on a very old, but useful boat, the Bryant T. As was later confirmed when bids were obtained for much of the labor on the similar custom installations on the Ken T tugboat, there was essential, boat-related work which competitors would not even bid. Given the custom nature of the work, the pricing of the labor was, in essence, speculative. Moreover, the owner-operator of the Bryant T and the Ken T, which ran the only boatyard in the North St. Louis Harbor area, could not afford to participate in the Project unless it could provide its cost share in kind.

What the boatyard owner-operator was able to do was to provide labor at what was its very competitive [redacted] per hour rate (compared, by way of example, to the [redacted] rate bid by [redacted] for work on the Ken T) and to obtain the engines directly from [redacted], a St. Louis area OEM and distributor that builds up marine engines (among others) for varying applications, without going through a dealer and a dealer mark up of the engine price. To offset the uncertainties and unknowns that these necessary arrangements introduced into the pricing process, the owner agreed to provide priced labor amounting to [redacted] of the [redacted] engine price and [redacted] (not [redacted]), of the fairly priced [redacted] labor. This was explained to the Project Officer at the time. The Grace Hill staff reasonably understood, as it continued to provide her documentation related to the owner's work, that it was accepted by her. (Exhibit 13)

The fairness of the labor price is demonstrated by the additional $9,377.50 documented labor overrun which the owner absorbed. Even without consideration of that voluntarily absorbed overrun, the owner's incurred cost sharing for the main engine replacement reduced the [redacted] amount funded by the EPA to less then the advantageous [redacted] price of the engine <u>alone</u>. That is a fair and reasonable price.

[redacted] subsequently has shared with Grace Hill, on a confidential basis, its price build-up for the main engine replacement. (Exhibit 14) It shows only an [redacted] gross, distributor level markup for both its distributor and dealer level functions in this transaction. It also shows that the markup funded by the EPA was, as a result of the owner's cost sharing, less than [redacted] that gross markup. That was a fair and reasonable price.

See **OIG Response 4** in appendix B.

<u>Auxiliary Engine</u>

The considerations bearing on the pricing of the replacement of the auxiliary engine on the Bryant T were substantially the same. Again, to offset the uncertainties and unknowns, the owner-operator agreed to provide priced labor at the same [redacted] per hour rate, amounting to [redacted] of the [redacted] engine price under the timely amended budget and contract and [redacted] (not [redacted]) of the [redacted] fairly priced labor. This arrangement was explained to the Project Officer along with the main engine transaction.

Again the owner-operator absorbed a documented overrun on labor costs of $305. Even without consideration of the overrun, the owner's in kind cost sharing of the auxiliary engine replacement reduced the [redacted] amount funded by the EPA to less than the advantageous [redacted] price of the engine <u>alone</u>.

[redacted] subsequently has shared with Grace Hill, on a confidential basis, its price build up for the auxiliary engine replacement. (Exhibit 15) It shows that the amount funded by the EPA approximates [redacted]'s cost. That is a fair and reasonable price.

See **OIG Response 5** in appendix B.

<u>Crane Engine Replacement</u>

The analysis of the crane engine replacement in the boatyard of the same owner, under the second contract, is virtually the same as that for the Bryant T engine replacements. In addition to the engine, [redacted] agreed both to build up the marine package on an expedited basis and to provide labor required to "regulate" the relatively low speed operation of this engine. Because it took on dealer level installation support services, it priced the engine not at the distributor price level, but at a dealer price (not retail price) level, for [redacted] (as compared to the dealer price build up of [redacted] for the engine alone that [redacted] subsequently has shared with Grace Hill, on a confidential basis). (Exhibit 16) (That that price was a dealer level price is confirmed in the discussion at page 18, where the dealer vendor of the comparable John Deere engines installed on the 3 [redacted] drill rigs discloses its cost was [redacted] per engine.) The owner-operator agreed to provide in kind priced labor cost matches of [redacted] or [redacted] for the engine, and of [redacted] or [redacted], plus an additional [redacted] (for an aggregate [redacted], not [redacted]), for the [redacted] crane labor. The owner-operator's in kind cost sharing of the crane engine replacement reduced the amount funded by the EPA, [redacted], to less than the price of the engine <u>alone</u>.

[redacted] subsequently has shared with Grace Hill, on a confidential basis, its price build up to [redacted] for the crane engine replacement, including labor. (Exhibit 17) That shows that the owner's cost sharing reduced the amount funded by the EPA to, in effect, [redacted]'s distributor level pricing, offsetting the approximate [redacted] dealer pricing "adder" for provision of dealer installation support services and risks. That too demonstrates a fair and reasonable price, especially considering the further information [redacted] has provided to Grace Hill. It has informed Grace Hill that the idle requirements for the crane engine were so low that they required major changes to the computer electronics, requiring [redacted]'s repeated tuning efforts over two months.

See **OIG Response 6** in appendix B.

Ken T Tugboat Engine Replacements

The Ken T tugboat engine replacements, also under the second contract, were a more complex procurement. While in kind cost sharing by the owner-operator continued to be fundamental to its participation, it could not bear [redacted] labor cost sharing on this three main engine/two auxiliary engine replacement effort. Nonetheless, as the bids obtained evidenced, use of its experienced personnel for at least the removal and installation of the engines in the hull of this old, but useful, boat was required even by its competitors.

The Project Officer advised the Grace Hill staff as to how to proceed:

> "Especially with the amount of money we're talking about, you need to be sure you (<u>or they</u>) get competitive bids, especially for the labor."
>
> (January 3, 2011 email) (Exhibit 18) (Emphasis added.)

That guidance was the same guidance the Project Officer had given when it had become necessary to get a second round of bids for the Fire Department installations:

> "... you'd need to get a few competitive bids... You could do that, <u>or the fire department could do the legwork</u> of getting bids..."
>
> (June 24, 2010 email) (Exhibit 19) (Emphasis added.)

Following that guidance, the owner-operator did obtain and provide the following bids for the then intended work:

BIDS	Company	Propulsion Engines (3)	Labor
A	[redacted] (Prop eng)	Per engine [redacted] 3 engines [redacted] Gears [redacted] Flange [redacted] Mounts [redacted] TOTAL [redacted] 9/9/2010	
B	[redacted] John Deere 61355M75 (Prop eng) John Deere 612AFM75 (Prop eng)	3 engines Gears Flange Mounts ________ TOTAL [redacted] 9/8/2010 Per eng [redacted] 3 engines [redacted] 2/15/2011	[redacted] [redacted]* Plus [redacted] [redacted] TOTAL [redacted] 1/11/2011 *Hours limited.
C	[redacted]		[redacted] $ [redacted]* Plus [redacted] [redacted] TOTAL $ [redacted] 1/13/2011 *Cost plus.

D	[redacted] Cat (Prop eng)	Per engine [redacted] 3 eng [redacted] Gears TBD Flange TBD Mounts TBD TOTAL TBD 9/10/2010	[redacted] [redacted]* Plus [redacted] _[redacted] TOTAL [redacted] 1/18/2011 *Not available.
E	[redacted] (Owner Operator)		[redacted]* *Firm Fixed price.

The owner-operator undertook to provide all the labor for an amount that unquestionably was lower than the other bids obtained and presented in the table. It committed to perform the installations for [redacted] on a firm fixed price basis. It could do so because its labor rates ([redacted]/hr) were materially less than those of its larger competitors (e.g., [redacted]/hr; [redacted]/hr) and because it was willing to bear any overrun on this difficult job as a further voluntary cost share. That that was fair and reasonable pricing for the labor as is confirmed by the fully documented $19,083.75 of overrun labor the owner absorbed as additional voluntary share (over and above the [redacted] agreed share on the engines and the [redacted] agreed share on the labor). In evaluating the labor pricing, it should be noted that the owner-operator also agreed to an [redacted] share of the labor for the two auxiliary engine installations on the Ken T, under the same contract, which the Draft Report does not question.

Unfortunately, after selection of [redacted] as the lower complete price bidder for the three propulsion engines, it was discovered that smaller engines would be required to match the coolers on the boat. [redacted] undertook to provide those engines for what Grace Hill staff believed, and what [redacted] subsequently has confirmed to Grace Hill, was the comparable pricing described in the next paragraph. In response to the owner-operator's request to confirm its quote on "2/15/11", it provided its reduced quote of [redacted] per engine, a [redacted] total for all three engines. (Exhibit 20)

To demonstrate that that was fair and reasonable pricing, [redacted] subsequently has shared with Grace Hill , on a confidential basis, its price build up for the three replacement engines. (Exhibit 21) That build up is to a price at the distributor level. While that build up supports the [redacted] price which [redacted] billed on April 25, 2011 (Exhibit 22), it also shows that [redacted] had materially reduced the price when it quoted the [redacted] price which it accepted in payment of its invoice as validated in the Fleet List Verification submitted with this response. That reduced price includes a calculated gross margin at the distributor level (not the higher dealer level or much higher retail level) of approximately [redacted]. That is a fair and reasonable price.

See **OIG Response 7** in appendix B.

<u>Food Delivery Truck Contracts</u>

The Draft Report criticizes the Grace Hill staff for the award of a contract for the re-engining of three Mercedes-engined Freightliner trucks for which one bid was received, for [redacted] per MBE906 Powerchoice Engine installed, or [redacted] in total. The task was, in fact, put out for competition. As the staff learned, but did not then document, there was only one bidder because it was the sole Mercedes truck engine franchisee in the St. Louis market. As the bidder has now confirmed:

> "We are it in the St. Louis market" (Exhibit 23)

The prices also were discounted as the bidder now has confirmed, because the owner of the trucks, which paid a [redacted] cost share of the re-engine costs, was a valued Freightliner customer of the bidder:

> "...we billed out the Mercedes engine out at [redacted] over cost due to the competitive nature of the project. Our normal labor rate at the time of the retrofits was [redacted]... TCI billed [redacted] hours of labor (which is book time) at [redacted] per hour. We also waived the shop supply charge. Thanks Doug...[redacted]." (Exhibit 24).

These discounted prices were fair and reasonable for installed Mercedes truck engines from a sole source in the St. Louis market.

See **OIG Response 4** in appendix B.

Drills Replacement Contract

The Draft Report asserts that the Grace Hill staff awarded an engine replacement contract for two drills and one crane without cost or price analysis, there having been only the one bid for the work. In fact, as reflected in the Budget changes and Workplan II revisions approved by the Project Officer on July 19, 2010, the work involved the installation of replacement engines on three very large drill rigs. The price of each installation was [redacted], consisting of the [redacted] engine price and a [redacted] labor price, for a total price of [redacted]. The owner paid a [redacted] cost share, so that the amount funded by EPA was [redacted].

As the Draft Report notes, the Grace Hill staff stated they had used quotes for similar retrofits for a comparative price analysis. The Draft Report, considering only the tugboat re-engines described above, hypothesized that these might have involved a different type or class of engine. It does not consider the crane re-engine project for the boatyard owner-operator also described above (at pages 12-13).

The crane re-engine project was, in fact, directly comparable to the drill rig installations: It used the same 6.8L John Deere engine, Series 68H485-225. The [redacted] price for that engine discussed above (at page 12) was [redacted]. The [redacted] price build up (provided above) compares to the invoices for the drill rig engines included in the enclosed Fleet List Verification, and shows that these John Deere engines are comparable. While the [redacted] price build up for that engine shows approximately [redacted] of unique parts, including SAE parts, for its installation ([redacted] minus [redacted]), the [redacted] price provided by [redacted] to its boatyard owner customer amounted to its pricing as a distributor to a dealer. In that light, the [redacted] dealer level price for the engines for the drill rigs compares very favorably. The comparison becomes even more favorable when the flat [redacted] installation price for each drill rig re-engine is compared to the [redacted] price for the crane labor, even considering the more difficult field effort required for the crane installation and the extra effort involved in regulating the low idle speed of the crane engine.

The supplier of the drill rig re-engines has confirmed to Grace Hill the competitiveness of its pricing for this work, including its [redacted] cost for the engines:

> "During our Slide program replacing the old non-Tier compliant engines with Tier 3 level John Deere engines we were able to only mark up the engines [redacted] due to the competitive nature of the program. Our cost alone on the engine was [redacted]. We also have a posted rate of [redacted] per hour for non-highway or off-highway work and with the competitive nature of this bid we bid at a rate of [redacted] per hour. However we also underestimated the complete complexity of taking a non-electronically controlled non-Tier compliant engine and replacing it with an electronically controlled Tier 3 engine. When considering this and looking at our labor content along with some fabrication of parts to mate it to the drive portion of the drill rig it put our effective labor rate on average down to [redacted] per hour. We have not nor would not bid so aggressively on a project like this without additional labor and parts mark up." (Exhibit 25)

The [redacted] price for each installed drill rig engine was, as the Grace Hill staff analyzed it, a fair and reasonable price.

See **OIG Response 9** in appendix B.

Contract Administration Substantially Met Federal Requirements

Grace Hill Awarded Contract to Responsive Bidder

The Draft Report is mistaken when it asserts that Grace Hill awarded the Airport support vehicle contract to a non-responsive bidder. Grace Hill awarded the airport contract to the fully responsive low bidder.:

1. The bids received and compared were for the same quantities.

2. The winning bidder did bid on all of the units called for in the RFP that were available.

3. As fully built up and supported, the bids provided for like DOC and CCV installations using verified technologies.

The mistaken assessment apparently arose from varying attempts by Grace Hill and the bidders to present bids and report information in the required EPA formats which did not anticipate the case in which some vehicles would have more than one engine. At the outset, there were 95 candidate vehicles, 20 of which had two engines each, for a total of 115 engines. The fact that each engine initially was separately listed in the "vehicle" column on the EPA Fleet List forms led to the confusion.

Then, without informing Grace Hill but as discovered by the two bidders, the airport removed one single engine vehicle from service, so it could not be included in the Project. As a result, both bidders bid on the same 94 vehicles, 20 of which had two engines each, for a total of 94 vehicles and 114 engines. As a result, the two bids submitted were fully comparable.

The losing, higher bid was for [redacted] for those vehicles and engines. (Exhibit 26) As can be seen by looking at "checked" line items on that bid, where the 2-engine vehicles are listed, each engine was bid separately, so that the bid is built up from 114 priced installations. 38 of the 2-engine installations were priced at [redacted] per engine, with two installations (for a different type of engine) priced at [redacted] per engine, for a total of [redacted].

The winning, lower bid for [redacted] listed the "Number of Vehicles" the same way, that is, as 114 units, in its cover bid sheets (Exhibit 27), as the "checked" line items for the 40 engines on the enclosed bid show. In the unit pricing build up submitted with those cover sheets, the 20 2-engine vehicles were, however, bid as 2-engine units as shown in the enclosed mark-up of that bid. (Exhibit 28) That meant that the build up priced 94 (not 114) priced installations, including 20 two engine installations, for a total of 114 installations. The price bid for each 2-engine vehicle was [redacted] for both engines or a total of [redacted]. The winning bidder confirmed this analysis and re-confirmed it when requested to do so. (Exhibit 29 and Exhibit 30)

The Fleet List Verification for the [redacted] Fire Department fleet identified at page 37 and submitted with this response is internally consistent with this "pairs" analysis and, thus, confirms it. Specifically, it shows that, starting with the 20 2-engined units originally identified and bid as such, the only 1994 unit and three 1997 units were removed from service (and thus not retrofitted), while two 1998 units were restored to service and retrofitted, resulting in the net 18 2-engined units in fact retrofitted and invoiced.

As would be expected from the material difference between the overall bids for the Airport installations, the winning bidder's price build up shows lower unit prices in six of the eight bid groups into which it organized the units for bidding purposes. (Exhibit 31) In the other two groups, one consisting of 12 units and one consisting of one unique unit (a 1992 GM 6.2L engined vehicle), the winning bidder's prices were competitive: in the first group, its price was [redacted] versus a range of prices from [redacted] to [redacted] from the other bidder; and in the second group, consisting of one vehicle, its price was [redacted] versus [redacted]. As the Final Project List Description Spreadsheet submitted with the enclosed Fleet List Verification shows, the Airport ultimately withdrew that unique vehicle from service, so that vehicle was not included among the installations performed.

Grace Hill awarded the Airport contract to the fully responsive low bidder.

The ensuing contract did contain a mutual mistake, stating the original 115 unit number as compared to the 114 units bid and intended to be awarded. The contract also called for "[i]nstallation of DOC and DOC/CCV's as appropriate and per bid package for 115 vehicles as identified and reviewed...." The fully detailed bid package assured the correction to the 114 identified units would occur during contract administration as, in fact, it did. That detailed bid package also enabled the correct and complete equitable adjustments that became necessary as the Airport withdrew additional vehicles from service and when the CCV technology being installed was withdrawn from verification in the course of performance, so that the CCV installations were terminated. The Draft Report acknowledges that there were no contract disputes or billing errors.

See **OIG Response 10** in appendix B.

<u>Invoice Payments Consistent with Contracts And Allowable</u>

The Draft Report errs as fully detailed below. Its fundamental errors include the following:

1. 40 C.F.R. 30.47 establishes the fundamental principles for determining allowable costs "[f]or each kind of <u>recipient</u>". (Emphasis added.) It provides that:

> "Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the cost."

In this instance, the "recipient", the entity whose expenditures are being audited, is Grace Hill Settlement House. Grace Hill is a non-profit organization. §30.47 explicitly provides:

> "The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "best Principles for Non-Profit Organizations."

That means that, under Section 30.47, the provisions of the Federal Registration Regulation at 48 CFR part 31 explicitly are not applicable to the Grace Hill expenditures which are being audited. The 48 CFR Part 31 principles, which apply only to <u>costs</u> incurred by recipient commercial organizations, have no logical or legal relationship to <u>prices</u> that non-profit organizations like Grace Hill may pay to them.

2. As a matter of contract law, where a course of performance is accepted without objection, the contract terms are modified so that they are consistent with that course of performance. Uniform Commercial Code § 2 – 208 (1) and (3).

3. As a matter of law and common sense, acceptance by a vendor of a payment <u>less</u> than its contract provided, resulting in a billing to the Government of a lower amount than it was obligated to pay, is not questionable.

See **OIG Response 11** in appendix B.

The invoice payments questioned by the Government are the following:

1. <u>Bryant T Tugboat Auxiliary Engine</u>

The Draft Report questions the payment of the [redacted] price of the auxiliary engine installed on the Bryant T Tugboat. While the original contract for the engine installation on the Bryant T did provide for a [redacted] Auxiliary (Generator Drive), that contract was timely amended, on September 25, 2010, following EPA budget approval on July 19, 2010, to provide for the upgraded [redacted] "[a]uxiliary engine/generator" priced described above (at page s 11-12). (Exhibit 32) There is nothing that can be questioned about payments for that auxiliary engine/generator in accordance with the budget and the contract terms.

See **OIG Response 12** in appendix B.

2. <u>Ken T Tugboat Auxiliary Engines</u>

The Draft Report questions the payment of the [redacted] net price for the two auxiliary engines installed on the Ken T tugboat, where the contract authorized and the EPA budget approved the payment for the two engines. That was a proper payment for the correct engines. First, two of the intended Kubota 50kw Keel Cooled auxiliary engine/generators were found to be available at [redacted] in Pompano Beach, Florida, so that they could be purchased for [redacted] each, a total of [redacted], rather than the [redacted] authorized and contracted for. Then the boatyard owner-operator, which purchased the engines directly, billed them to Grace Hill net of its [redacted] cost share, reducing the invoice amount to the [redacted] price that, without this explanation, the auditors apparently did not understand. (Exhibit 33) There is nothing questionable about that reduced payment.

See **OIG Response 13** in appendix B.

3. Delivery Truck Mercedes Engine Replacement

The Draft Report questions the payment of the [redacted] price for the re-engining of the third of three Mercedes-engined Freightliner trucks discussed above (at page 16). The re-engining of three trucks, two Mercedes-engined trucks and one Cummins-powered truck had been planned and authorized. When the owner determined not to do the other Cummins-powered truck, the third Freightliner was substituted, bid at the same price, completed, and accepted. That acceptance modified the contract, and the invoice for the engine was properly paid. Grace Hill understood and continues to believe that the substitution and payment was authorized, so long as the work could be accomplished, as it was, within the budget authorized Contractual amount. As the Project Officer advised with respect to such differences in a September 5, 2011 email:

> "That's fine – this is just the budget, so I'd expect actual expenses to be different. Tell me about it in the final report!" (Exhibit 34)

Grace Hill did report it in the final report. There is nothing to question about this payment.

See **OIG Response 14** in appendix B.

4. Fire Department Invoice Identification

The Draft Report questions the payment of two invoices in the amounts of [redacted] and [redacted] for DOC installations on Fire Department trucks. As fully reported below, Grace Hill has performed the complete Fleet List Verification that the Office of the Inspector General requested. That Fleet List Verification is submitted with this response. In the Fleet List Verification for the Fire Department Vehicles, which identifies each attached invoice and the vehicle involved by Asset # or Unit #, and by VIN, the two invoices questioned are the first and last invoices listed and attached. There is no remaining question about this payment.

See **OIG Response 15** in appendix B.

5. Airport Invoices

The Draft Report questions $167,763.19 of the [redacted] paid for the installation of DOC's and CCV's on 70 Airport support vehicles as explained above (at pages 18-20), 18 of which have dual engines, including 23 with both DOC and CCV's installed. The payments were appropriate and supportable.

The Fleet List Verification for the Airport installations (Exhibit 83) discussed at pages 37-39, lists and attaches the invoices for the work actually accomplished, listing the vehicles in the order in which they were included in the original Final Fleet List Description Spreadsheet and then further identifying each vehicle by Asset # or Unit #, and by VIN or Serial #. The Fleet List Verification demonstrates that this work was done, as does the confirmation of completion of the retrofit work by the Fleet Manager for the airport. (Exhibit 85).

Moreover, the accomplishment of the work and the payment of no more than proper amounts for it was in fact diligently tracked by the Grace Hill Program Manager using his Contract Manager spreadsheet. (Exhibit 35) Two developments did complicate that tracking and, at least initially, made confirmation of the payments difficult. First, in mid-contract performance, the verified technology status of the CCV's was withdrawn. That meant that, while the installation of DOC's continued as contracted, further CCV installations had to be discontinued. Second, due to the variability of the installations in the many unique vehicles, the vendor undertook to give Grace Hill and the Government credit for installation parts not used and, in the far lesser number of cases where more installation parts were used, to charge for those parts. Exhibit 36 traces those credits and few charges. Starting with the fully documented bid prices for the respective units discussed above (Exhibit 31), it shows CCV credits totaling $40,503.68 and net installation parts credits of $6,911.63, confirming the net billing and proper payment of [redacted]. Those crediting practices, which benefited the Government, were accepted and modified the terms of the contract accordingly. The fact that the vendor billed and Grace Hill paid $17,822.13 less than the originally contracted and authorized prices is not grounds for disallowing $167,263.19 of that proper payment.

See **OIG Response 16** in appendix B.

<u>"Mixed Terms" Caused No Disputes or Billing Errors</u>

Grace Hill acknowledges that it would have been better practice to delete the lump sum language in the standard cover contracts, where it appeared. The significantly revised Grace Hill Accounting and Financial Policies and Procedures Manual which became effective March 18, 2013 addresses the contract type issue at page 59. Except as approved in writing by Grace Hill's Chief Financial Officer, all contracts are required to be fixed price type contracts, including both prices per unit and a total price or not to exceed price.

In the contracts addressed in the Draft Report, the number of units and a not to exceed price also were included in the Schedules defining the work. Each of those Schedules also incorporated the Vendor's bid package which included the unit prices from which the not to exceed price was built up. The parties correctly construed the contracts as unit price contracts. No disputes or billing errors resulted.

See **OIG Response 17** in appendix B.

Enhanced Controls for Eligible and Fully Supported Costs

Grace Hill, which has strengthened its management oversight, professional staff, and overall control environment as described above (at pages 3-6), also significantly revised its Accounting and Financial Policies and Procedures Manual to more fully provide for a two step review to assure that only eligible and supported costs are submitted (at pages ___). Review and approval both by the appropriate Program Manager and the Controller or designated Finance staff is required. Detailed criteria for segregation of unallowable costs and for determining allowability of costs are provided (at pages 70-71). Program managers and program accountants are being trained in using these criteria along with OMB Circular A-122. Obtaining required documentation is emphasized in that training.

Grace Hill appreciates that the Draft Report recognizes that the $3,072 amount of the questioned costs is not material. While Grace Hill cannot today produce more complete documentation for a number of these costs, it believes that what it knows about these costs shows that they were both reasonable and allocable.

1, 2. Camera and Accessories. As the Draft Report notes, support for the $200.76 and $11.98 costs for these items was provided. The former Project Director has informed Grace Hill that the camera was used to document Project events like the Project Kick Off event. See Exhibit 37, including a picture from the event.

3, 4. Postage/Shipping. The $61.80 and $36.85 postage shipping costs were Project costs, not costs for the Americorps program. As the auditors must have observed, the one line check description for the reimbursement of those costs to the Project Director did read "Misc. Supplies For AmeriCorps". The Supporting Payment/Check Request Forms, which determined the actual charging of the costs, correctly describes and codes those costs as Project (584) costs. (Exhibits 38 and 39)

6,7 (no 5 listed). Intern Bus Passes. Grace Hill believes that item 7 for $224.95, like item 6 for $204.00 which also was recorded as "Local Travel", also was for bus passes for interns. These bus passes were provided by Grace Hill to interns to enable them to get from their North City residences to the jobs provided to them by Project Partner vendors. Contrary to the apparent understanding of the auditors, the Partners' contract responsibilities did not extend beyond the jobs they provided on the job sites. The bus passes were a necessary Project expense.

9, 10, 11. Out of Town Travel/Conference Meeting. The former Program Manager has informed Grace Hill that these expenses, for $240 in 2009, $786.63 in 2010, and $964.20 in 2011, were costs of his attendance at annual EPA conferences. Exhibit 40 shows that the $240 was for his per diem while attending the CARE Conference in October 2009. Exhibit 41 shows that the $786.63 was for his "Lodging for EPA DERT-CONF" in November 2010. Exhibit 42 documents the $964.20 credit card expense for air travel for the 2011 conference, though it does not alone further support it. See, however, page 2 of the Exhibit 18 email where the Program Manager informs the Project Officer of his planned departure for the 2011 CARE Conference. The Program Manager reports that he not only was an active participant at these conferences, but also that he was, "a couple of times", a presenter at them.

See **OIG Response 18** in appendix B.

Unallowable Costs

The Draft Report also asserts that four, supported expenditures for "Food items", totaling $642.97, "are expressly disallowed under 2 CFR 230, Appendix B, Section 14." Grace Hill does not believe that all food items are expressly disallowed under Section 14 as the Draft Report apparently contends. Section 14 addresses "[c]osts of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as . . . meals . . .)". It has not generally been understood to extend to appropriate and reasonable refreshments that are incidental to, and that are incidental costs of, meetings, conferences, and symposiums having the principal purpose, like the Project Kick Off event, of dissemination of Project information. Compare, for example, FAR 31.205-14, on "Entertainment costs,", which contains the same language as Section 14, with FAR 31.205-43 on such "Trade, business, technical and professional activity costs."

See **OIG Response 19** in appendix B.

Readily Available Documentation Supports, In Part,

Personnel Cost Benefits by Award

Grace Hill acknowledges that the charges to this Project for the Personnel and Fringe Benefit costs of its two full-time employees who worked, in varying proportions of their time, on the Project were based on budgeted allocations that were based on the budgeted funding for their efforts. Grace Hill now understands that such budget estimates do not alone constitute adequate support for those charges.

The provisions covering labor charges in Grace Hill's revised Accounting and Financial Policies and Procedures Manual are fully compliant with all federal requirements, including those summarized in the Draft Report. See pages 92 through 94 of the Manual covering Personnel Activity Reports accounting for the actual activity of each employee by award, Preparation of Time Sheets for all hours worked, Processing of Time Sheets, and Review of Payroll. The Manual expressly provides at page 92 that "[b]udget estimates will not be used as support for charges to award."

In order to assure that the policies and procedures contained in the Manual are consistently followed and cannot be overwhelmed by the volume of paper reports necessary for tracking by award and ensuing payroll allocation computations, Grace Hill has fully implemented an Electronic Time and Attendance Procedures for <u>all</u> employees. These procedures fully incorporate the timekeeping and performance activity reporting by award that the Manual requires. The Electronic Time and Attendance Procedures provided to employees to enable their inputs are enclosed. (Exhibit 43)

Before the revised Manual was completed and the new Electronic system and procedures were implemented, Grace Hill did implement interim manual improvements in July 2011, to comply with the federal requirements. While that interim procedure did require a separate time sheet for each contract as the Draft Report noted, it also required a complete Personnel Activity report for all hours worked that justified the time assignments to specific contracts made from the aggregation of the separate time sheets that did track actual time by award. (Exhibit 44)

Notwithstanding the limitations of the direct records of the actual activity of its two full-time employees on the Project, Grace Hill believes that the available records adequately support at least the charges for the time of its Deputy Program Manager on the Project. From the commencement of the Project in July 2009 through the end of December 2010, she worked only on the predecessor EPA Cooperative Agreement DE-97704301 ("DERT") and on the Project, allocating 40% of her time to the DERT program and 60% of her time to the Project. From January 1, 2011 through April 8, 2011, she worked only on the Project, so that there is no allocation issue. Her signed timesheets evidencing her time worked for the entire period have been made available for audit. The history of the DERT program and this Project have been fully documented. DERT was an approximate $450,000 program that involved the installation of one technology (CCV's) by one vendor on vehicles owned by one Beneficiary. No material difficulties were encountered and no significant changes were made in the course of performing the program. In contrast, the Project became an all-consuming effort to manage the continuously evolving Fleet Lists of its multiple public and private beneficiaries, for whom emissions reduction work exceeding $2,000,000 in value was being performed by multiple vendors, in more than 16 combinations of beneficiaries and vendors, with multiple changes in verified emissions technologies that required changes in the work being performed. All of this is documented in the Fleet List Verifications described below (at pages 37-39) and submitted with their response. That documentation demonstrates that, for the period when the Project and the DERT program overlapped, the Project cost represented at least the 60% of the Deputy Program Director's effort that was allocated to the Project. (Grace Hill already has agreed in its July 23, 2012 Settlement Agreement with the EPA to forego and repay the entire 40% allocation to the DERT program, so that the allowance of only the 60% effort on this Project presents no further issues for the DERT program.)

In contrast to the Deputy Program Manager, the Program Manager worked on a number of programs funded by a number of grantors, allocating only 20% of his time to the Project from its commencement through its conclusion. While this Project overwhelmed him and that 20% allocation as well, Grace Hill will not at this time undertake the effort that would be needed to adequately support the charges for his time.

Based on the actual records of her time worked and actual records of the work performed on this Project, Grace Hill submits that the EPA should allow at least $48,235.79 of the $79,458 of questioned costs. That is the amount of the Personnel and Fringe Benefits charges for its Deputy Program Manager shown above to "represent actual activities performed for the CA."

Labor Reporting Periods	Personnel Costs	Fringe Benefit
7/26/2009 – 12/26/2009	$9,758.40	$1,497.90
12/27/2009 - 6/26/2010	11,294.40	1,733.68
6/27/2010 – 12/25/2010	11,294.40	1,733.68
12/26/2010 – 4/8/2011	9,411.91	1,511.42
Total	$_41,759.11_	$_6,476.68_

See Exhibit 45 for Labor Distribution Reports for the Project (58401). Personnel costs are gross pay less GTL – Group Term.

See **OIG Response 20** in appendix B.

Cash Draws Generally Complied With
Federal Requirements And Have Been Improved

Grace Hill appreciates the conclusion of the Draft Report that its cumulative cash draw did not exceed its cumulative expenditures, so that the Report does not question the amount of Grace Hill's total cash draw.

Having reviewed the supporting detail provided by the Office of the Inspector General as requested, Grace Hill concludes that the basis for the Report's assertion that it drew amounts in excess of immediate cash needs was based on three draws, one in which Grace Hill inadvertently drew $35,098 in respect of an accounting error and two in which it did not promptly credit Beneficiary matches of $9,877.50 and $3,625.00.

The $35,098 charging error and draw arose from a DERT Vendor correction of its billing error from August 2009, which occurred as Grace Hill was launching the Project and segregating its Project accounts from those for the DERT program. The charge was corrected in the next monthly project draw. The $35,098 amount included in Draw 2 on 11/10/2009 (Exhibit 46) was reversed on the January 20, 2010 Invoice Summary, resulting in a negative balance and no billing at that time. (Exhibit 47) The resulting credit from Draw 2 was carried forward in the reduced contractual amount and, thus, credited against the April 2010 Invoice in the next monthly Draw, reducing the amount of that Draw to $3,633.31. (Exhibit 48) (Draw 3 and Draw 4 both occurred on the same date in April 2010.) This is not a systemic issue.

In the case of the other two incidents, relating to cost sharing match payments it received from a Beneficiary, Grace Hill received the $9,877.50 amount on June 9, 2010 (not May 20) and the $3,625.00 amount on September 16, 2010. The $3,625.00 amount was credited against the October 2010 Invoice supporting Draw 12 resulting in the net billing of $9,297.83. (Exhibits 49, 50, 51 and 52) Grace Hill believes, but does not have the intermediate detail calculations to show, that the $9,877.50, as re-recorded on July 31, 2010 (Exhibit 53) to remove it from sales, was deducted from the next monthly invoice by its exclusion from the Cum Actual Contractual amount in the same manner that the $3,625 amount was removed from the Contractual amount balance in Exhibit 50, reducing it from $399,013.14 to $395,388.14 as then shown on Exhibit 51. That is the October 2010 Invoice supporting the October 2010 draw, showing the $9,297.83 net amount for Draw 12 (cover sheet attached). (Exhibit 52) In all events, the $9,877.50 match was credited, as the Draft Report recognizes, in Grace Hill's final reconciliation and payment report letter on September 30, 2011, which includes a recap and re-credit of all matches credited against that and prior payment requests. (Exhibit 54)

For this Project, Grace Hill's accounting system led it to adopt what amounted to a dual draw approach, that is, making specific draws for the extraordinarily large "contractual" expenses (for emissions reduction work) to which it was not accustomed and "regular" monthly draws for other expenses that were required to be reconciled with the specific draws and reflected other items such as match payments that were processed through its accounting system separately. Grace Hill dealt with the cash match payment reconciliations, which it similarly was not accustomed to, in a manner that was as timely as "administratively feasible" using the adequate accounting system it then had.

Grace Hill now has specifically addressed matches in its revised Accounting and Financial Policies and Procedures Manual (at pages 33 and 46). "The CFO will ensure that all match revenue is credited to the proper grant on a timely basis so it will be taken into consideration before requests for reimbursement are made." Equally importantly, under the new Post-Award Procedures established in the Manual (at pages 26-27), a grant manager will timely document and communicate such requirements to, among others, the Finance Department.

As to the final draw reviewed for the Draft Report, Draw 10, Grace Hill is re-submitting its draw package which, while made available to the auditors, may not have been reviewed. (Exhibit 55) Grace Hill believes the package contains adequate details to support its calculation of the $12,176.57 draw.

See **OIG Response 21** in appendix B.

Indirect Costs Were Approved

Grace Hill reasonably believed that it was entitled to include the indirect costs that it reported, so that it is entitled to retain at least the $91,037 amount of those costs reported in its Final Report.

Grace Hill sought and obtained the approval of its Project Officer both to charge its increased, 19.5% indirect rate and to charge that new rate on the additional, second round awards for emission reduction efforts that it was able to make because of underruns and other cost reductions on originally planned work. In her November 5, 2010 email, the Project Officer responded:

> 1. I'd say you can charge the new indirect rate from whatever date it's effective with HHS. Please provide us that documentation for our files.
> 2. I'd say yes, you can charge indirect on the new contracts you issue – I'd just ask that you be reasonable and not split the work into a thousand contracts.
>
> (Exhibit 56)

Grace Hill understood that that approval was subject only to the limit of the $2,000,000 awarded for the Cooperative Agreement, not to the $63,383 budget amount that did not reflect all the approved changes. By way of example only, when it pointed out that there were cost differences on items that would be detailed on the Final Report, the Project Officer responded in a September 5, 2011 email:

> That's fine – this is just the budget, so I'd expect actual expenses to be different. Tell me all about it in the final report!
>
> (Exhibit 57)

Based on that understanding and those approvals, Grace Hill calculated its indirect costs, in accordance with the terms of its Nonprofit Rate Agreement dated May 14, 2009. (Exhibit 58) It properly based that calculation on the 16 distinct contract actions and technology awards that it made to distinct beneficiaries or groups of like beneficiaries. The Nonprofit Rate Agreement provides that the "Base" for the indirect cost calculation shall be "Total Direct Costs excluding ... that portion of each <u>subaward</u> in excess of $25,000 .... " (Emphasis added.) Nothing contained in that definition or in the Guide for Indirect Cost Rate Determination suggests or requires the Draft Report's bare contracts-issued standard, as distinguished from the substantive subawards standard established by the Agreement, is to govern the count of the awards to be included in the Base.

As reflected below and in the attached exhibits, there were at least sixteen subawards.

Contract 1, the January 11, 2010 [redacted] contract (Exhibit 59), provided, after the termination of the Fire Department vehicles, for two substantive subawards:

Subaward 1. The [redacted] installation of DOC's and DOC/CCV's; and

Subaward 2. The [redacted] installation of APU's.

Contract 2, the October 27, 2010 [redacted] contract (Exhibit 60), provided for three substantive subawards:

Subaward 3. The Fire Department installation of DOC's and DOC/CCV's;

Subaward 4. The [redacted] installation of APU's; and

Subaward 5. The [redacted] installation of replacement engines.

Contract 3, the March 1, 2011 [redacted] contract (Exhibit 61), provided for two additional substantive subawards (not counting a second [redacted] APU award):

Subaward 6. The [redacted] installation of APU's; and

Subaward 7. The [redacted] installation of APU's.

Contract 4, the August 15, 2010 [redacted] contract (Exhibit 62), provided for two additional substantive subawards (not counting a second [redacted] subaward for DOC's and the terminated [redacted] award):

Subaward 8. The [redacted] and other school bus companies installation of DFH's; and

Subaward 9. The St. Louis City truck installation of DOC's.

Contract 5, the October 11, 2010 [redacted] contract (Exhibit 63), provided for an additional substantive subaward (not counting the terminated [redacted] award) for:

Subaward 10. Installation of DFH's on subsequently identified [redacted] and other school bus company buses.

Contract 6, the February 22, 2010 [redacted] contract (Exhibit 64), provided for an additional substantive subaward (not counting the de minimis [redacted] single APU award) for:

Subaward 11. Installation of DFH's on [redacted] and other school bus company buses.

Contract 7, the November 8, 2010 [redacted] contract (Exhibit 65), provided for two additional substantive subawards for:

Subaward 12. Installation of DFH's on subsequently identified [redacted] and other school bus company buses; and

Subaward 13. The [redacted] installation of engine replacements for two drills and one crane.

Contract 8, the October 11, 2010 [redacted] contract (Exhibit 66), provided for an additional substantive subaward for:

Subaward 14. Installation of DFH's on subsequently identified [redacted] and other school bus company buses.

Contract 9, the January 12, 2010 [redacted] contract (Exhibit 67), provided for an additional substantive subaward (not counting the Amendment #2 upgrade of the installed auxiliary engine/generator) for:

Subaward 15. Installation of a new propulsion engine and a new auxiliary engine in the Bryant T.

Contract 10, the March 1, 2011 [redacted] contract (Exhibit 68), provided for an additional substantive subaward (not counting the award for the re-engining of the free-standing yard crane) for:

Subaward 16. Installation in the later identified Ken T. of new propulsion engines and new auxiliary engines.

The sixteen substantive subawards identified above do not include the purchase of the new truck for [redacted] invoiced February 10, 2011, and do not include the purchase for [redacted] from [redacted] of the [redacted] invoiced March 19, 2010 shown in the Fleet List Verifications. (Exhibits 81 and 76). Those sixteen substantive subawards also do not include the de minimis [redacted] APU award also included in the Fleet List Verifications (Exhibit 76), the duplicate [redacted] award for "like technology", the duplicate [redacted] award even of dissimilar technology, and the duplicate [redacted] award for crane (as distinguished from tugboat) work, all expressly excluded in the foregoing 16 subaward listing. Adding those six exclusions would bring the total of the substantive subawards to twenty-two.

The count of sixteen subawards, permitting the inclusion of up to $25,000 for each in the Indirect Cost Base, is a reasonable application of the Nonprofit Rate Agreement. It should be accepted both as a matter of sound construction and substantive analysis. It more than met the guidance provided by the Project Officer to "be reasonable." The fact that Grace Hill may have understated the number of substantive subawards and its indirect costs in Interim reports did not deprive it of the right to correct the count and correctly calculate its indirect costs for its Final Report.

See **OIG Response 22** in appendix B.

III. Detailed Response to Chapter 5: Substantial Compliance with Recovery Act Job Reporting Requirements

Grace Hill believes that its Final Report shows substantial compliance with the Recovery Act job reporting requirements. The Final Report sets out the number of positions that were funded at Grace Hill and the manner in which their "participation" was estimated. It also sets out estimates of the number of jobs preserved or created at the Project Partner vendors, providing the vendor letters and emails supporting those estimates. (Exhibits 69, 70, 71, 72, and 73) The estimates are expressed in "full time equivalents" (FTE), as the Draft Report states was required.

The Draft Report apparently questions the manner of preparation of these estimates, asserting that use of a specific formula was required. That assertion is contrary to the guidance that was provided to Grace Hill at the Grantee Workshop on March 30-31, 2011, when retrospectively, on the last days of the six month extended Schedule Project, it received guidance on how to document all aspects of the Project. Grace Hill did follow that guidance in documenting the Close Out of the Project as reflected in this response, including, in particular, preparing check lists for all Vendor Close Outs based on that guidance and then gathering all the information needed to effect those close outs.

As for the job estimates specifically, Grace Hill followed the guidance it was given:

> Question 2. What suggestions does EPA have for recipients to help them identify and measure the direct jobs created and jobs retained?
>
> Answer 2. Recipients should <u>not</u> use a model or formula (including the MECA formula) to estimate the number of jobs. Recipients should directly estimate the number of jobs.
>
> Prime recipients should make sure that the major direct employment effects of the recovery funds they receive are captured in their overall estimate of jobs created and retained. Job creation information should be collected from both sub-recipients and vendors. (Exhibit 74) (Emphasis added.)

As related above, Grace Hill prepared and documented its Final Report in accordance with those instructions, including, contrary to the Draft Report's "formula" requirement, not using a model or formula to estimate the numbers of jobs.

See **OIG Response 23** in appendix B.

IV. Detailed Response to Chapter 6: Grace Hill Met the Objective of the Cooperative Agreement

The documentary evidence submitted with this response demonstrates that there is no reasonable basis for doubt as to whether Grace Hill substantially met the objective of the Cooperative Agreement.

The Draft Report acknowledged that the correct technology had been installed on items available for inspection. It did not, however, express an opinion as to whether Grace Hill met the objective due to the following:

- "Lack of adequate verifiable details in Grace Hill's final progress report."
- "Not all vehicles were available for inspection during our site visits."
- "Grace Hill did not consistently document work completion verification."

Adequate Verifiable Details

The Project Fleet List Description Spreadsheets provided with Grace Hill's Final Report were prepared in accordance with the instructions for those Spreadsheets. The spreadsheets provided the information requested. As permitted by those instructions and contemplated by the form of the Spreadsheet, like units on which like work was done were reported together as a Spreadsheet line item (with the number of like units on the line being identified).

While there was and is no requirement that Grace Hill provide a further "verifiable" Fleet List to demonstrate that it met the objective of the Cooperative Agreement and paid the vendors only upon their submission of invoices representing completion of the required work, Grace Hill has prepared Fleet List Verifications for each of the Project Fleet Description Spreadsheets submitted with its Final Report. The following Fleet List Verifications are enclosed, together with revised Spreadsheets as updated to reflect the validated information provided in the Fleet List Verifications:

1. [redacted]: St. Louis City Fire Department (Trucks) (Exhibit 75)
2. [redacted]: [redacted] (Drill Rigs) and [redacted] (Exhibit 76)

3. [redacted]: [redacted] (Delivery Trucks) (Exhibit 77)
4. [redacted]: [redacted] (Trucks) (Exhibit78)
5. [redacted]: Tug Boats and Crane (Exhibit 79)
6. [redacted]: [redacted], [redacted], and [redacted] (Buses) (Exhibit 80)
7. [redacted]: [redacted] and [redacted] (Buses), [redacted] and St. Louis Streets Department (Trucks), and [redacted] (Truck) (Exhibit 81)
8 [redacted]: [redacted] (Buses) (Exhibit 82)
9. [redacted]: [redacted] (Support Vehicles) (Exhibit 83)

A set of Fleet List Verifications, supported by a set of matched invoices, is being submitted by U.S. mail.

Overview. In summary, the Fleet List Verifications are based, spreadsheet line by spreadsheet line and unit by unit, on the vendor invoices for each of the units on which emissions work was performed. Supported by those vendor invoice representations of work completion, spreadsheet line by spreadsheet line, the Fleet List Verifications confirm the numbers of units on which the work was performed, as well as the Technologies installed, and the invoiced costs properly paid by Grace Hill on the basis of those representations.

Fleet List Verification Details. Each Fleet List Verification began with the original Fleet List Description Spreadsheet for a vendor Project.

Each line of the original Spreadsheet was expanded to separately list each unit included on that line.

Each unit then was verifiably identified to the Invoices on which it was billed, by its usually external Beneficiary Asset # or Unit #, and by its VIN (or other serial or identification number).

The unit verifications were extended to include Technology and Installation Costs.

Each line of a Fleet List Verification is supported by a vendor Invoice. In most cases, these are unit-by-unit Invoices, so the Invoices are arranged in the same order as the Fleet List Verification. Where multiple units were billed on a single invoice, the units on the invoice are numbered to show the Fleet List Spreadsheet line to which they correspond.

As reflected in the Fleet List Verifications, there were a limited number of invoice variances or omissions (e.g., missing Beneficiary Asset #'s). All of these have been corrected or completed, as noted, based on Beneficiary and Vendor records. In the case of separate invoices, any such supplemental information (e.g., a VIN check) is provided immediately behind the respective invoices. Where multiple units were billed on a single invoice, the supplemental information is provided behind the invoice set and "keyed", page by page, to the Asset or Unit #'s covered.

Conclusion. What the Fleet List Verifications demonstrate in detail is that Grace Hill's Program Manager, who in real time diligently used a Contract Manager spreadsheet tool to compare the EPA Approved Budget to Vendor Invoices as they were received, properly approved payments based on invoice representations for the correct technologies on the correct numbers of units. Those payments were in the correct amounts as more fully discussed above (at pages 23-24).

Project Fleet List Description Spreadsheets. A revised Project Fleet Description Spreadsheet is provided with each Fleet List Verification. The revised Spreadsheets make the limited corrections noted in the Verification annotations. Where Spreadsheet lines cover multiple units, they also extend the technology and installation costs to add the prices paid for the multiple units.

See **OIG Response 24** in appendix B.

Unavailability for Inspection and Confirmation of Work Completion

Contrary to the implications of the Draft Report, there is neither a requirement that all retrofitted units be available for inspection during site visits nor a requirement that a recipient of a grant such as Grace Hill itself verify work completion.

As the Draft Report reflects, the school buses on which retrofit work was performed operate from a number of yards, being shifted from time to time among the yards depending on their route assignments, and run those routes on school schedules, so that the buses could not all be made available for inspection at one time or during regular working hours. Similarly, Airport support vehicles that are on Airport service could not be inspected due to safety concerns and work schedules, so that, again, all the support vehicles could not be made available for inspection as desired These observations show that it would be unreasonable to require that all retrofitted units be made available for inspection. Nonetheless, the Draft Report does report that the correct technologies were, consistent with the vendor representations, found to have been installed on the available buses and support vehicles not deployed for service.

Grace Hill acknowledges that there was a misunderstanding about the arrangements to see the first selected tugboat at a site near where it was in service. The tugboat owner did make its second boat, which was in the boatyard, available for inspection. Grace Hill does not understand the basis for the Draft Report's finding that the [redacted] auxiliary engine installed on that boat did not match the contract. As discussed above (at pages 11-12), both the budget had been revised and the contract amended to provide for that upgraded engine.

With respect to inspections by Grace Hill's staff, it was limited, as were the auditors, in what could be done when conducting vendor site visits. The staff could, as the Draft Report confirms it did, verify that work on the vehicle that it saw at work sites met the requirements. Even if it had been required to do so, which it was not, it could not practicably have performed "a random selection of vehicles" from the large bus and public service fleets, either before they were diverted from their schedules for retrofit or after they were retrofitted and returned to service: Grace Hill could not control the retrofit schedules. The contractor Invoice Payment Package used to confirm more than half of the work was designed by the Grace Hill staff midway through the Project to assure the regular documentation of vendor payments, so that it was not used for earlier payments. It also was not used, for example, in some cases where timely Beneficiary confirmations of vendor large fleet work were not practicable.

See **OIG Response 25** in appendix B.

Other Confirmations of Work Completion

In addition to the comprehensive vendor representations of work completion confirmed by the Fleet List Verifications, the Contractor Invoice Submission forms that were obtained, and the Grace Hill staff observations of correct technology installations, the Grace Hill staff did assemble the following more than adequate documentation of work completion:

1. For [redacted] Work:

St. Louis Fire Department. On March 2, 2011 the Fleet Maintenance Manager for the Fire Department confirmed that the retrofits had been completed on all but one of its vehicles, for which it was holding all the components for installation on the vehicle (following completion of a crash investigation). (Exhibit 84)

[redacted]. On May 10, 2011, the Fleet Manager for [redacted] confirmed completion of the retrofit work on its 88 vehicles, including the 18 2-engine vehicles. (Exhibit 85)

[redacted]. On May 16, 2011, [redacted] confirmed the re-engining of its three Mercedes-engined delivery trucks (Exhibit 86), as also had been evidenced earlier by its payment of the [redacted] cost share shown in the enclosed Fleet List Verification.

2. For [redacted] Work.

St. Louis Street Department. On May 10, 2011, the Commissioner of Equipment Services for the St. Louis Street Department confirmed the DOC installations on its 15 trucks had been "accepted by inspectors in our shop." (Exhibit 87)

[redacted]. By its May 16, 2011 letter [redacted] also confirmed the retrofits on five additional delivery trucks. (Exhibit 86)

[redacted]. By its October 5, 2011 letter, [redacted] confirmed acceptance of its new delivery truck, earlier confirmed by its payment of the [redacted] cost share shown in the enclosed Fleet List Verification. (Exhibit 88)

[redacted] Buses. On May 7, 2011 [redacted] provided its Webasto Heater Resolution worksheet for those buses. (Exhibit 89) Rather than a limited random sample (which was not required by any regulation or award provision and which the Draft Report suggests retrospectively would have been better practice), that worksheet, initialed bus-by-bus by both [redacted] and [redacted] (at least one in all cases), confirms not only installations, but also a series of checks and adjustments desired by [redacted] and negotiated by the Grace Hill staff, for the vast preponderance of the buses. It also contains [redacted]'s commitment to correct any bus that was not available for re-inspection, but that might later have an issue.

EPA Region 7 earlier asked Grace Hill some questions about those worksheets. In a letter dated May 9, 2013, Grace Hill provided the following response:

> "The [redacted] Fleet List Verification addresses your Invoice and Asset # reconciliation questions."
>
> "In addition to those reconciliation questions, you asked about a number of notes appearing on the Webasto Worksheet. The Webasto Worksheet was a [redacted] document that it developed, after [redacted] raised some questions about its installations, to reasonably assure [redacted] and Grace Hill that its installations had been properly made or were adjusted or completed as appropriate. It did not purport to be a 100% review. [redacted]'s May 7, 2011 cover note stated:
>
> > Attached is the checklist for the DFH. We were not able to check all of the buses due to the coordination necessary with the maintenance crew, some buses being out at Body Shops for repair damage, or out on route. We told fleet managers that [redacted] was available if there were any problems and arrangements would be made to correct those issues.
>
> [redacted], which had raised the questions, reportedly was satisfied with the follow-up efforts."
>
> "As to Asset #s 742 and S048, which apparently were "Not Working" or "Not Running" at the outset, both later were fully "Checked Off" by [redacted] and [redacted]."
>
> "As the Asset #s S015 and S049, which apparently were "Not Installed" at the outset, both later were fully "Checked Off" by [redacted] and [redacted]."
>
> "As to Asset #439, where the question was "Cannot find – Sold?", see the bottom of page 6 of the Worksheet where it is written in and fully checked out and "Checked Off" by [redacted]."
>
> "As to Asset #529, [redacted] has confirmed that the correct VIN is, as it was first written, 1HVBBABPS1H414228. That confirmation has been added to the Fleet List confirmation notes."
>
> "As to Asset #S018, where the question was a "Not Installed" note, the issue arose because [redacted] started a second line item for the same bus, Unit #202080, Asset #S018, with the same VIN, and, in marking it out and recording it "Not Installed", ran that note up over the first line item. We have previously tested this issue for the Office of the Inspector General. On September 12, 2012, [redacted], accompanied by a [redacted] maintenance employee, [redacted], confirmed the identification of the bus and the fact that a Webasto DFH was installed on the bus. [redacted] took the seven attached pictures showing the Unit # and the VIN, and showing the DFH installation, to document his inspection."

[redacted] Buses. On May 7, 2011 [redacted] provided its checklist covering the same issues for the [redacted] buses, again covering the vast preponderance of these buses rather than a small sample, and again committing to correct any issues that might arise on few remaining buses that were not available for re-inspection. (Exhibit 90)

3. For [redacted] Work.

[redacted]. By its letter dated May 11, 2011 (Exhibit 91), [redacted] confirmed the re-engining of its three identified drill rigs, as was earlier confirmed by its payment of its [redacted] cost share shown on the enclosed Fleet List Verification.

[redacted] Buses. On April 22, 2011 and May 26, 2011, [redacted] provided its Webasto inspection worksheets for the Hill Street and Spring Street bus locations, initialed both for [redacted] and for [redacted]. These cover 49 of the 57 DFH installations for [redacted], leaving only "the final inspection on them for next week." (Exhibits 92 and 93)

[redacted]. On "1-26-11" and "4-21-11", [redacted]'s representative signed Contractor Invoice Submissions accepting the retrofit work on its buses. (Exhibit 94 and Exhibit 95) [redacted]'s Regional Maintenance Manager sent an April 21, 2011 email (Exhibit 96) that is noted in Exhibit 95 as an "Attached Email". It confirms that:

> "All units are installed and completed."

4. For [redacted] Work.

[redacted] Buses. [redacted] provided its Webasto inspection checklist for the [redacted] buses showing the "Authorized Initials" for all items by both [redacted] and [redacted]. (Note that, though the installation date of one DFH, on Unit #1723A, had not been recorded, its installation was confirmed by the initialing.) (Exhibit 97) This list was incorporated in a Contractor Invoice Submission noting "each bus signed off by fleet manager". (Exhibit 98)

5. <u>For [redacted] Work</u>. By its July 28, 2011 letter, [redacted] again confirmed the engine retrofits for the Bryan T and Ken T tugboats, both propulsion and auxiliary engines, and then for its 3900 Manitowoc Crane. (Exhibit 99) These installations also are confirmed by the detailed invoices supporting the Fleet List Verification and by its multiple cost shares, in cash and in kind, detailed in the Fleet List Verification.

With the now complete verification of Grace Hill's Project Fleet List Description Spreadsheets, fully supported by the vendor representations contained in the matched invoices and supported by the representations of the responsible Beneficiary officials, there is no reasonable basis for doubt as to whether Grace Hill met the objective of the Cooperative Agreement.

Critically, what the foregoing evidence establishes is that Grace Hill more than met the objective of the Project as was documented in the original approved Project Workplan. As fully developed in the narrative in Grace Hill's Final report, Grace Hill's staff, with the support of the Project Officer, used the changes in the original fleet lists and verified technologies to evolve the finally approved Workplan. As reported in the Final Report, that plan added an additional tugboat, the boatyard crane, the three drill rigs, 201 more school buses, and 18 additional long haul trucks PPU's. All of these additions are confirmed by the foregoing submissions. As presented in the Final Report, the additions resulted in a material net increase in emissions saved.

See **OIG Response 26** in appendix B.

V. Detailed Response to Chapter 7: Other Matter – Billing on Other CA Was Corrected

The Draft Report states that a $35,098 expense was drawn twice under the prior DERT Cooperative Agreement DE-97704301. The duplicate charge which arose inadvertently from a vendor invoice correction from August 2009 was itself corrected through subsequent draws. Draw 2 in September 2009 was for $35,098 for a specific "Contractual" obligation. (Exhibit 100). Draw 4 for $39,515.37, submitted in November 2009, was the "monthly" draw for October 2009. It included the same "Contractual" item, along with indirect costs and other small costs. (Exhibit 101) Draw 5, in March 2010, which was only for a specific "Contractual" obligation in the amount of $18,564, did not, accordingly, test for or correct the duplicate draw. (Exhibit 102) Draw 6, submitted in October 2010, was the next "monthly" draw. Because it correctly reported the total "Contractual" items Grace Hill had paid to date ($351,520, being $297,508 from Draw 1, $35,098 from Draw 2, and $18,564 from Draw 5) and credited the full $429,675.06 amount of the DERT "Prior Revenue" from Draws 1 through 5, it corrected for Draw 4 when it billed only $11,867.76 Exhibit 103). The $429,675.06 that it credited was $302,308 from Draw 1, $35,098 from Draw 2, $34,189 from Draw 3, $39,515.37 from Draw 4, and $18,564 from Draw 5. (Exhibit 104). Though the $35,098 credit computation does not explicitly appear on the face of Exhibit 103, that the $11,867.76 was a correct net billing after deducting all prior draws is confirmed by subtracting the $429,675.06 amount of the prior claims from the "Contractual" expenditures, "Total Including Contract", of $441,542.82 shown on Exhibit 103:

"Total Including Contract"	$441,542.82
"Prior Claims"	- 429,675.06
	11,867.76

That Draw 6 had corrected the duplicate charge is confirmed by the Summary supporting Draw 7. (Exhibit 105)Draw 7 was for $3,718.74. That was the "Actual" increase in "Total" expenditures between Draw 6 and Draw 7, from $441,542.82 to $445,261.56. Revenue to date of $441,542.82 (being $429,675.06, including the $35,098 duplicate charge as shown above, plus Draw 6 for $11,867.76) was credited:

“Total”	$445,261.56
“Revenue to Date”	- 441,542.82
	$ 3,718.74

The $35,098 draw was timely corrected.

See **OIG Response 27** in appendix B.

VI. Conclusion

In this response to the Draft Report Grace Hill has shown that:

1. Grace Hill exceeded the emissions objective of the CA as defined in the original approved Work Plan for the Project.

2. The Contract prices Grace Hill paid were fair and reasonable, based on competition and cost and price analysis consistent with 40 CFR §30.43 or §30.45

3. Grace Hill substantially met the contract administration requirements of 40 CFR §30.47 using its Program Manager's Contract Manager spreadsheet to manage vendor invoices and payments and through its Close Out documentation.

4. The $3,072 of questioned costs were not material, and the limited costs questioned were allocable and reasonable in amount, and not expressly disallowed.

5. In larger part, the Personnel Costs and Fringe Benefits Grace Hill incurred for the Project represented "actual activities performed for the CA."

6. Excepting one ($35,098) and possibly a second ($9,878) cash draw arising from inadvertent accounting errors, which Grace Hill had corrected so there was no net overdraw, Grace Hill's draws credited the cash match payments actually in issue in a manner that was as timely as administratively feasible.

As a result, except with respect to a limited amount of Personnel Costs and Fringe Benefits which were a benefit that was provided to the Project, but for which documentation is not readily available, no recovery is necessary or appropriate.

Grace Hill, which had adopted compliant policies and procedures in 2009 and was in the process of strengthening its management and implementation of those policies and procedures at the outset of the Project has:

- Further enhanced its policies and procedures and their implementation, addressing all of the questions in the Draft Report.
- Implemented a compliant electronic timekeeping and activity reporting system.
- Strengthened its management, including a new Chief Financial Officer and a Contract Administration Manager.
- Strengthened its Board oversight, including having an Acting Chair and a new Chair of the Finance/Audit Committee, and five more new directors, with significant management, accounting, finance, corporate governance, and government contracting experience.

Grace Hill's Financial management systems now are fully compliant with federal requirement.

See **OIG Response 28** in appendix B.