OIG Evaluation of GH Comments

OIG Response 1:

These are summary statements. Our evaluation of the details is presented below in OIG responses 2 to 27.

OIG Response 2:

Comments in this section of the response are primarily background information, which has no effect on our findings and recommendations, with the following exceptions:

1) Although GH listed a number of actions it has taken to strengthen its internal control, we have not evaluated the adequacy or implementation of these internal controls. Region 7, prior to any future awards, should verify that the internal controls are adequate to address the issues raised in this report and that the controls are properly implemented.

2) GH stated that it did not understand the extent of the documentation requirement until the end of March 2011, the date on which the project's six month extended schedule concluded. However, when GH accepted the award, it has accepted responsibility for complying with the applicable requirements. It is incumbent upon GH to obtain adequate knowledge of the federal requirements to ensure compliance.

OIG Response 3:

GH said the contracts were based on free and open competition and that the awards were for the most advantageous solution at the lowest price. However, GH did not document its decision on the technology selection or the final contract price.

GH's file said staff left the bid open about the technology because GH and the main project partner were unclear as to the type and model of DFH needed. The file also said two days before the bid due date, GH staff "got the words from [the main project partner] that only Webasto products were acceptable." The file went on to say that product assessments continued into 2010. However, there was no detail about the assessment.

In the draft response, GH provided an exhibit with product comparison information. However, the exhibit only shows comparison of the two models bid by the winning bidder – Webasto and Espar. Several different models proposed by Company C were not considered in the comparison. Furthermore, the document shows that the only bidder present at the product comparison meeting was the winning bidder. This gives the appearance that the winning bidder was the preferred company.

As explained in the draft report, GH was also unable to provide documentation to support the unit price negotiation. Although in the draft report response, GH attempted to provide clarification on its procurement decisions and justify the contract price, GH did not document its decisions at the time of the procurement and did not comply with the federal requirements. Consideration of after-the-fact explanations and documentation is within the discretion of EPA management and would require that the agency make an exception in accordance with 40 CFR §30.4. We have continued to question the costs as unsupported.

OIG Response 4:

GH did not dispute the finding that cost or price analysis was not conducted at the time of procurement. GH awarded the contract to the only bidder, who was also the tugboat owner, without other bids, cost comparisons, or explanations to demonstrate that the contract price was fair and reasonable.

As part of draft report response, GH attempted to justify the sole source procurement by explaining that the work was of custom nature. GH also obtained information from its equipment supplier, after the fact, to show that the markup on the engine for the EPA project was lower than the supplier's normal practice and that the labor rate charged by the owner-contractor was lower than its supplier.

Consideration of the after-the-fact explanations and documentation is within the discretion of EPA management and would require that the agency make an exception in accordance with 40 CFR §30.4. Based on the audit, GH did not comply with the federal requirements. We have continued to question the costs as unsupported.

OIG Response 5:

The project partner (i.e. tugboat owner) contracted to replace three auxiliary engines under the CA - one engine under the first contract and two engines under the second contract. GH did not conduct the required cost or price analysis for the first contract and the labor portion of the second contract. GH did not disagree with our finding.

As part of draft report response, GH provided additional explanations and obtained information from its vendor "on a confidential basis" with an attempt to justify the price. Consideration of the after-the-fact documentation is within the discretion of EPA management and would require that the agency make an exception in accordance with 40 CFR §30.4. Based on the audit, GH did not comply with the federal requirements. We have continued to question the costs as unsupported.

OIG Response 6:

At the time of procurement, GH only obtained one bid for the crane engine from a vendor for $25,000. GH awarded the contract for $48,000, including $23,000 for the project

partner's labor. There were no other quotes, cost or price comparisons, or documentation to show that the contract price was fair and reasonable.

Although in the draft response, GH attempted to provide explanations and documentation obtained after the fact to justify the contract price, the information was not available and the cost or price analysis was not conducted at the time of procurement; therefore, the procurement did not comply with federal requirement. Consideration of the additional information is within the discretion of EPA management and would require that the agency make an exception in accordance with 40 CFR §30.4. We have continued to question the costs as unsupported.

OIG Response 7:

As acknowledged by GH, the quotes provided in the table on pages 14-15 of GH's response were not the engines actually contracted for and installed. The engines contracted for were the same model as the propulsion engine for the first tug boat. However, the owner-contractor increased the unit price by 19.5 percent, from $39,895 to $47,666. The reasons provided by the owner-contractor for the price increase were very general, such as a price increase for the owner, engines coming from out of state, freight, and "items listed on equipment statement." There was no evidence of GH conducting cost or price analysis to determine whether the price for the first contract or the subsequent price increase for this contract was fair and reasonable.

GH also did not conduct cost or price analysis to determine whether the labor cost proposed by the owner-contractor was fair and reasonable. The labor quotes provided in the response included a portion of the work to be performed by the owner-contractor. GH did not conduct analysis of the owner-contractor's portion of the costs or document whether having the owner-contractor performing and charging for part of the work affected on the prices quoted.

Although in the draft response, GH attempted to provide explanations and documentation obtained from its vendor after the fact to justify the contract price, cost or price analysis was not conducted at the time of procurement and GH did not comply with the federal requirements. Consideration of any additional information provided after the fact is within the discretion of EPA management and would require that the agency make an exception in accordance with 40 CFR §30.4. We have continued to question the costs as unsupported.

OIG Response 8:

GH acknowledged that only one bid was received for the food delivery truck contract and that it did not document the reason for awarding the contract to the only bidder. In the draft response, GH explained that the contractor was the sole Mercedes truck engine franchisee in the St. Louis market. As stated in the draft report, GH also did not conduct cost or price analysis. Title 40 CFR 30.45 states that some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. The regulation further explains that price analysis may be

accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indices, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. When price analysis cannot be accomplished through bid comparisons, such as the case for this contract, alternative methods, such as cost analysis, must be conducted to demonstrate that the contract price was fair and reasonable.

Although in the draft response, GH attempted to provide explanations and documentation obtained after the fact to justify the contract price, GH did not comply with the cost or price analysis requirement at the time procurement. Consideration of any additional information provided after the fact is within the discretion of EPA management and would require that the agency make an exception in accordance with 40 CFR §30.4. We have continued to question the costs as unsupported.

OIG Response 9:

There was no documentation in GH's file justifying awarding the contract to the only bidder. In fact, it appeared that the project partner was referred to GH by the bidder and the bid was initially submitted prior to the RFP date. This issue was brought to GH's attention during our fieldwork. Although GH staff explained that they used quotes for other similar retrofits as comparison, there was no documentation to support the statement. GH stated in the draft response that they compared the price for the drill rigs to the second tugboat crane replacement project. As explained in OIG Response 6 above, the tugboat crane replacement contract was also awarded without cost or price analysis.

In May 2013, GH obtained information from its equipment supplier with an attempt to justify the contract price. However, the information was obtained after the fact. Consideration of any additional information provided after the fact is within the discretion of EPA management and would require that the agency make an exception in accordance with 40 CFR §30.4. We have continued to question the costs as unsupported.

OIG Response 10:

GH's explanations for awarding a contract to a nonresponsive bidder appear reasonable. Our initial conclusion that the bidders only bid 114 and 94 of the 115 units was based on discussions with GH's project manager. We have removed the issue from the final report based on GH's draft response.

GH did not address the ***Contracts Contain Inaccurate Information*** section; therefore, the finding remained unchanged.

OIG Response 11:

According to 40 CFR §30.27, commercial organizations need to follow 48 CFR Part 31 for cost allowability. Costs claimed under the grant were initially incurred by the contractors (commercial organizations); therefore, 48 CFR Part 31 was referenced.

Regardless of the cost principle, cost allowability is based on contract terms and conditions. Any amount incurred in excess of the agreed upon contract amount are not allowable. Items 2 and 3 in this section of GH's comments will be addressed with the specific examples – see OIG Response 13 and 14 below.

OIG Response 12:

This issue was brought to GH's attention during fieldwork. GH did not mention the contract modification and was unable to provide an explanation for the price variance. With the contract modification GH provided in the draft response, we have removed this item from the invoice payments not consistent with contract terms list.

However, the issue under Invoice Payments Not Consistent With Contract Terms remained in the final report because GH did not provide adequate documentation to address this issue on three other contracts.

OIG Response 13:

This section is related to item 3 on page 21 of GH's comments. Even though the amount billed was less than the contract amount, we questioned the costs because we were unable to determine whether the correct engine was installed and billed. The owner-contractor proposed the Kubota SQ-33 engine in its bid, but billed for the 50kw Keel Cooled. This issue was brought to GH's attention during fieldwork. GH was unable to provide an explanation for the price variance or the question regarding the correct engine. EPA Region 7 was also unable to determine whether the "50kw Keel Cooled" engine installed and billed was the same as the "SQ-33" bid.

At the time of our final exit conference on July 11, 2013, we confirmed that the SQ-33 was installed, consistent with the contract requirement. However, the item invoiced was the 50kw Keel Cooled, not the SQ-33, and GH staff was unable to provide any explanations. Therefore, we have continued to question the costs.

GH reiterated the owner-contractor's contribution to the project costs. However, the reasonableness of the contract price is unrelated to this issue which is invoice payments not consistent with contract prices.

OIG Response 14:

This section is related to item 2 on page 21 of GH's comments. GH stated that under UCC, accepting performance without objection modifies the contract. UCC is a set of laws governing commercial transactions. UCC is not a federal law, but a product of the National Conference of Commissioners on Uniform State Laws and the American Law Institute, which are private entities. EPA awarded the CA under Title 40 CFR Part 30. Title 40 CFR §30.47 requires a system for contract administration be maintained to ensure contractor conformance with the terms, conditions, and specifications of the contract and to ensure adequate and timely follow-up of all purchases. The contractor

changed one of the vehicles and engines contracted for without modifying the contract; therefore, the contractor did not comply with the contract specifications. We have continued to question the costs.

GH said it believed the vehicle and engine substitution was accepted and authorized, as long as the work is accomplished and within the grant budget. GH quoted an email from EPA stating "*that's fine – this is just the budget, so I'd expect actual expenses to be different.*" Upon review of the email, we noted that the statement referenced to items where the actual price was different from the grant budget, and not a change in the vehicle, engine type, or contract terms.

OIG Response 15:

We questioned the $1,635.27 and $1,235.40 because these unit prices billed did not match the contract unit prices, which incorporated the bid unit prices. The Fleet List Verification provided in exhibit 75 of GH's response did not link the bid items to the invoiced items and none of the items bid and contracted for had a unit price of $1,635.27 or $1,235.40. GH's comments did not address the finding. We have continued to question the costs.

OIG Response 16:

The contract proposal, as incorporated into the contract, showed most of the airport vehicles (72 of the 94 vehicles) were to have both the DOC and CCVs installed. For these vehicles, one unit price was proposed for both items together. As stated in GH's draft response, in mid-contract performance, the verified technology status of the CCVs was withdrawn and more or fewer parts were needed in some circumstances. Both of these events resulted in changes to the contract terms and conditions and would have required a renegotiation of the contract price with supporting cost or price analysis. However, GH did not modify the contract, renegotiation the contract price, or conduct cost or price analysis. As a result, the invoiced prices did not match the contract prices. We havecontinued to question the costs.

OIG Response 17:

GH acknowledged the contracts contain mixed terms issue and said that it has revised its policies and procedures to address the issue. No additional comment from the OIG is needed. This issue will remain outstanding until recommendations 2b and 2c have been resolved.

OIG Response 18:

As stated in the draft report, although the unsupported and ineligible items did not total to a large dollar amount, they are significant in terms of number of transactions. This is also an on-going issue for GH, as the same issue was raised by EPA Region 7 in its onsite review.

Based on the explanations provided in GH's draft response, we have accepted the camera and accessory costs of $200.76 and $11.98. We have continued to question the remaining costs, as explained below:

Postage/Shipping. Although these items were coded to the EPA project, the description shows Americorp, as acknowledged in GH's response. We believe the description is a more accurate representation of the purpose of the costs, as the project codes are assigned based on the expenditure descriptions. Since these costs are allocable to the Americorp, they are ineligible expenses under the EPA project.

Intern Bus Passes. GH did not provide supporting documentation, such as invoice or payment receipt, for the $224.95 transaction. Furthermore, the approved grant budget only shows one line item relating to intern costs. The line item was "intern program". The budget shows that 100 percent of the costs for the line items were voluntary costs share. There is no evidence that GH or the EPA would bear any part of the intern costs. Therefore, we have continued to question the costs as unsupported.

Out of Town Travel/Conference/Meeting. Based on GH's response, two of the transactions ($240.40 and $964.20) were related to "CARE conference" travel. In its single audit final determination letter, dated February 23, 2013, EPA management determined that "CARE conference travel is not an allowable charge under the National Clean Diesel Emission Reduction program." In accordance with EPA's determination, we have reclassified these as ineligible costs under the CA.

The third transaction, in the amount of $786.63, was for the EPA's DERT conference. DERT is a prior EPA cooperative agreement; therefore, the amount is allocable to DERT, not this cooperative agreement. As a result, we have reclassified the amount as ineligible costs.

OIG Response 19:

Based on our understanding of the project, we believe food and beverage are not necessary for project performance. Rather, they are for entertainment purpose, as explained in the draft report. In its single audit final determination letter, dated February 23, 2013, EPA management also disallowed food, beverage, and related entertainment costs. For these reasons, we have continued to question the costs as ineligible costs under the CA.

OIG Response 20:

GH acknowledged that the labor costs questioned were charged based on budget allocation. As explained in the report, this practice did not comply with the federal requirements. Although GH stated that the deputy program manager only worked on the two EPA projects from July 2009 through December 2010, her time was still charged based on budget allocation, contrary to the federal requirement. GH also stated that the deputy program manager worked exclusively for this project from January 1, 2011, through April 8, 2011. However, there was no corroborating evidence for this statement. During the exit conference, GH said the timesheets and labor distribution reports were corroborating evidence. We disagree with GH. GH's practice was to charge labor costs based on budget and the deputy program manager was budgeted to work exclusively for this project during the time period. According to GH's practice, the deputy program manager would have charged exclusively to this project regardless of the actual work performed. There is no assurance that the timesheets represented actual activities performed. The labor distribution reports provided by GH were generated from its accounting system based on timesheet data. The timesheets were prepared based on budget; therefore, the labor distribution reports were also prepared based on budget, contrary to the requirements of 2 CFR Part 230, Appendix B, Section 8.m. We have continued to question the costs as unsupported.

OIG Response 21:

We agree with GH's comment that the over-drawn amounts mainly resulted from errors in accounting and handling of the project partner matches. Nevertheless, GH drew in excess of the immediate cash needs and held onto the excess cash for several months. For example, the $35,098 over-drawn under draw 2, dated January 10, 2009, was corrected in draw 4, dated May 20, 2010 (or a 6 months lapse time).

GH said it received the reimbursement from the project partner for the $9,877.50 in June 9, 2010, not May 20, as stated in the draft report. May 20 was date of the actual cash draw. Regardless of when GH actually received the reimbursements from the project partners, the project partner shares should have never been included in the EPA draws. GH should have only drawn for the EPA's share based on the cost sharing arrangements established under the contracts. The fact that the project partner shares were included in the draws shows a control weakness in GH's cash draw process.

GH also stated that it "[did] not have the intermediate detail calculations to show" when the $9,877.50 was credited, even though it was eventually credited by the final payment request date on September 20, 2011. Not being able to track payments and credits/refunds is another example of weakness in GH's process.

From May 20, 2010, when the $9,977.50 was over-drawn, to the final payment letter of September 20, 2011, is a 16 months lapse time.

GH said it has provided the support for draw 10. The same documentation was included in exhibit 55 of the draft response. We reviewed the documentation during fieldwork. We traced the information to GH's general ledger and noted that $1,892 of the draw amount of $12,176.55 was not supported by the general ledger. GH was unable to provide an explanation during fieldwork. No additional explanation was provided in the draft response.

The above examples showed that GH did not comply with the federal requirement for immediate cash needs. These examples also demonstrated the need for improvements in GH's cash draw process. Our position on the issue remains unchanged. The same issue was also noted in the 2009 single audit report.

OIG Response 22:

GH said it is entitled to at least the $91,037 claimed. We disagree. Although GH was authorized to use the new indirect cost rate, it is still subject to the budget ceiling and the requirement for prior approval under 40 CFR §30.25(c)(2)(iii).

GH considered each contract line item a subaward for determining the $25,000 limit. Title 40 CFR §30.2(ff) defines subaward as "an award of financial assistance…made under an award by a recipient to an eligible subrecipient … The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services." Title 40 CFR §30.2(ff) clearly says a subaward is a contract or equivalent, not a line item within the contract.

Based on GH's comments and our review of 40 CFR §30.2(ff), there was 10 contracts awarded. Our calculations based on the 10 contracts show indirect costs of $92,051. GH claimed $91,037 of the $92,051. The amount claimed exceeded the approved budget by $27,654. Our position on the issue and the questioned costs remained unchanged.

OIG Response 23:

Regardless of what instructions were given to GH, the recipient is responsible for complying with the applicable requirements established under the Recovery Act. We agree that the MECA formula referenced by EPA is not an acceptable method for calculating jobs created or retained under the Recovery Act. OMB guidance documents were issued to implement the Recovery Act requirements. OMB Guidance M-10-8 specified the method for estimating the number of jobs created and retained. According to the guidance, the number of jobs created and retained is to be expressed in terms of FTEs and are to be calculated using the total number of hours worked on the Recovery Act-funded project during the reporting quarter

divided by the total number of hours in a full-time schedule for the quarterly. The guidance further required the calculated FTEs to be adjusted to count only the portion funded by Recovery Act funds.

GH did not provide the required supporting calculations. GH's final report listed the number of FTEs preserved without any supporting data, with the exception for interns, which were estimated to be an average of 16 hours per week for 8 to 10 weeks. The intern FTEs were not based on actual hours work as a percentage of total number of work hours for each quarter, as required under the OMB guidance. Exhibits 69 through 73 referenced in GH's draft response also did not provide any actual job creation or retention data in relation to the project. For example, exhibit 69 states "...just hired a new employee last week and is looking into hiring a full-time pilot..." Exhibit 70 states "...hired three interns..... Two of the interns worked with us for 8 weeks and the third worked for just over ten months...We currently employed 62 employees and are currently looking to hire experienced technicians..." As a result, we were unable to determine whether the FTEs reported as created or retained were calculated according to OMB guidance, including whether the project partner shares were excluded from the FTE calculation. Our position on the issue remained unchanged.

OIG Response 24:

Our position on this issue remains unchanged. Although GH provided the vehicle identification details for the fleet lists as part of draft response, this information was not available for sample selection during our fieldwork. Since our fieldwork phase has already passed, the new information provided by GH will not affect our position on the issue.

OIG Response 25:

We disagree with GH’s statement that there is no requirement to make all retrofitted units available for inspection or for the recipient itself to verify work completion. Recovery Act section 1515, as incorporated into administrative condition 17 of the CA, requires the recipient to allow any appropriate representative of the OIG to examine any records of the recipient, any of its procurement contractors and subcontractors that pertain to, and involve transactions relating to grant. Based on our interpretation of this requirement, we believe GH is required to make the retrofitted units available for inspection.

Programmatic condition 11 of the CA also states that the work under the CA must be completed in accordance with the approved workplan. Item 5 of the workplan states that GH will assure retrofits are ordered, installed and maintained in a timely manner. Without some form of verification, GH would not be able to provide this assurance. Furthermore, the final report is GH's representation to the EPA that it had completed all of the tasks under the agreement. It is GH's

responsibility to ensure that its final representation is accurate, complete, and properly supported.

Regarding the tugboat which was not made available for inspection during fieldwork, GH arranged for the inspection at the time of final exit conference on July 11, 2013. We have adjusted our report accordingly.

In connection with the inconsistency in work completion verification, GH acknowledged that invoice payment packages verification was not done for the earlier payments and for instances where timely beneficiary confirmations of large fleet work were not practicable. No additional comment is needed from the OIG.

Based on our explanations above, our final position on this issue remained unchanged.

OIG Response 26:

Our position on this issue remained unchanged. Although GH provided letters from project partners confirming work completion, some of the confirmations were general and did not address the agreed-upon technologies or vehicles. Examples of confirmations include "[a]ll of the vehicle that were scheduled to have DOS's installed have been completed, of course with the exception of the ones that have been removed from service", "[the contractor] completed installation on three repowered engines in three trucks belonging to…" and "[the contractor's] DOC installations were accepted by inspection in our shop. The truck types were actually dump trucks rather than refuse trucks." The general confirmations did not provide the necessary assurance that the work was completed according to contract specifications, such as the correct make and model of engines being installed.

OIG Response 27:

GH provided several draws to show that the $35,098 charged to the prior EPA CA has been credited back to the EPA. We are unable to confirm the credit without extensive review of the documentation and the general ledger details for the prior grant. EPA had a settlement agreement with GH on the prior grant. According to Region 7 staff, the settlement agreement covered all issues relating to the prior grant. Based on our review of the settlement agreement, we agree with Region 7's representation. We have removed this issue from the final report.

OIG Response 28:

All comments have been addressed in the detail sections under OIG responses 3 to 27 above.