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

Examination Reports

Selected Sub-grantees of the Department of Energy's American Recovery and Reinvestment Act – Illinois State Energy Program

OAS-RA-13-19 April 2013

Department of Energy

Washington, DC 20585

April 30, 2013

MEMORANDUM FOR THE ASSISTANT SECRETARY FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY

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

SUBJECT: INFORMATION: Examination Reports on "Selected Sub-grantees of the Department of Energy's American Recovery and Reinvestment Act – Illinois State Energy Program"

BACKGROUND

The Department of Energy's (Department) State Energy Program (SEP) provides grants to states, territories, and the District of Columbia to support their energy priorities and fund projects that meet their unique energy needs. The American Recovery and Reinvestment Act of 2009 (Recovery Act) significantly expanded the SEP by providing an additional $3.1 billion. The Illinois Department of Commerce and Economic Opportunity (DCEO) was allocated $101.3 million in Recovery Act SEP funds. DCEO allocated the funds to 8 separate programs funding more than 138 projects. Otis and Associates, PC (Otis), an independent certified public accountant firm, selected four sub-grantees to test their compliance with Federal and State laws, regulations and program guidance. The four sub-grantees selected were Association of Illinois Electric Cooperatives (AIEC); Bley, LLC (Bley); Funk Linko, Inc. (Funk Linko); and Abengoa Bioenergy Operations, LLC (Abengoa).

The attached reports present the results of examinations of the selected sub-grantees' compliance with Federal and State laws, regulations and program guidelines applicable to the SEP in the State of Illinois (Illinois). The Office of Inspector General (OIG) contracted with Otis to perform the examinations and express opinions on the sub-grantees' compliance.

RESULTS OF AUDIT

Otis expressed the opinion that except for the weaknesses described in its reports, each of the sub-grantees complied in all material respects with the requirements and guidelines relative to SEP. Regarding the areas of non-compliance, the examinations found that:

- AIEC did not adequately monitor member cooperatives to ensure delivery of energy efficiency upgrades or services performed for which rebates were issued;

- Bley did not comply with Recovery Act requirements to separately track costs and maximize competition in equipment purchases;

- Funk Linko did not properly account for its cost matching and maximize competition in equipment purchases; and

- Abengoa could not fully support that it had complied with Recovery Act requirements to separately identify costs, pay prevailing wages in accordance with the Davis-Bacon Act, and ensure competition in awarding subcontracts.

The reports included recommendations to the sub-grantees for improving the administration of their SEP Programs. The sub-grantees provided comments to the reports and provided planned and ongoing actions to address the issues identified. While corrective actions were generally responsive to the recommendations, the Department needs to ensure the planned actions are completed.

Funding Provided for Completed Projects

In addition to compliance issues identified at the sub-grantee level in Otis' examination reports, we are concerned about Illinois' practice of providing Recovery Act funds to projects that had already been completed. This issue was made apparent in the examination of Abengoa's sub-grant of $2 million. Specifically, Abengoa had started its project in February 2009 and completed the work in December 2009, long before the Recovery Act sub-grant agreement was executed in April 2010. Based on data provided by the Department, we also noted three other Illinois Recovery Act SEP projects, totaling $186,400 in funding, that appeared to be completed prior to award of the related sub-grants. When we asked why Illinois was authorizing pre-award costs, an Illinois official reported that selecting "shovel ready" projects or projects underway was important and that there was not time to meet the deadlines if the projects were new. However, in these cases, the projects were not underway, but appeared to be already completed. When alerted to the concern about completed projects, the Department's Contracting Officer stated that there was nothing in the legislation prohibiting Illinois from using Recovery Act funding for pre-award costs. Although not expressly prohibited, we question whether providing funds for completed projects met the intent of the Recovery Act to stimulate the economy and create or save jobs.

RECOMMENDATIONS

As part of its responsibilities for managing the SEP, we recommend the Assistant Secretary for Energy Efficiency and Renewable Energy:

1. Require Illinois to improve administration of SEP funds by ensuring its sub-grantees implement the recommendations outlined in the attached examination reports; and

2. Examine Illinois' use of Recovery Act funding of pre-award costs and completed projects and recover amounts not meeting the intent of the Recovery Act.

We also recommend that the Contracting Officer for the Illinois SEP Program:

3. Resolve questioned costs of about $2 million related to the Abengoa sub-grant.

MANAGEMENT REACTION

The Department concurred with the recommendations and committed to implementing corrective actions. In regard to our concern about Illinois' practice of providing Recovery Act funds to projects that had already been completed, the Department responded that although the Abengoa project was completed prior to execution of the sub-grant agreement in April 2010, the costs were incurred during the allowable timeframe for the grant. Additionally, the Department stated that the new ethanol plant was operational and providing efficient production of ethanol, which addressed the intent of the legislation to reduce our dependence on foreign oil. Finally, the Department stated that it had been assured by DCEO that all other projects were consistent with the intent of the Recovery Act legislation and that the costs were incurred within the Recovery Act timeframe. The Department's response is included in Attachment 5.

DCEO also submitted comments that generally concurred with the findings and recommendations. In its response, DCEO stated that prior to issuing sub-grants, it had determined that Recovery Act funding could legitimately be awarded for "shovel ready" projects that started after the law was enacted. DCEO also pointed out that the Department had reviewed and approved its sub-grants. DCEO's response is included in Attachment 5.

We found the Department and DCEO comments to be responsive to our recommendations. However, after considering their responses, we remain concerned about Illinois' practice of funding completed projects. The primary purposes of the Recovery Act include preserving and creating jobs, promoting economic recovery, and providing investments in infrastructure that would increase economic efficiency or provide long-term economic benefits. In our opinion, reimbursing recipients for costs incurred on projects completed before grants were awarded does not provide the economic stimulus the Recovery Act intended. Additionally, the term "shovel-ready" inherently implies that projects are not already completed and are in need of funding to move forward. The use of Recovery Act funds to reimburse recipients for projects already completed reduced funds available for other projects that would have preserved or created jobs or promoted economic recovery.

EXAMINATION-LEVEL ATTESTATION

Otis conducted its examinations in accordance with attestation standards established by the American Institute of Certified Public Accountants, as well as those additional standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. The examination-level procedures included gaining an understanding of the State's and the sub-grantees' policies and procedures, and reviewing applicable SEP requirements. The procedures also included a review of internal controls, as well as tests of appropriateness of cost data, including travel expenditures, contractor and subcontractor charges and compliance with the Davis-Bacon Act. Otis is responsible for the attached reports, dated April 18, 2013, and the conclusions expressed in the reports.

The OIG monitored the progress of the examinations and reviewed the reports and related documentation. Our review disclosed no instances in which Otis did not comply, in all material respects, with the attestation requirements. We coordinated with SEP management as the examinations progressed to keep them informed of their progress. An exit conference with SEP management was waived. An exit conference was held with DCEO on April 22, 2013.

Attachments

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

EXAMINATION REPORTS ON SELECTED SUB-GRANTEES OF THE DEPARTMENT OF ENERGY'S AMERICAN RECOVERY AND REINVESTMENT ACT – ILLINOIS STATE ENERGY PROGRAM

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Report on Examination-Level Attestation Engagement

Of

Association of Illinois Electric Cooperatives
American Recovery and Reinvestment Act
State Energy Program

Performed for the U.S. Department of Energy,
Office of Inspector General

Under

Contract Number: DE-IG0000018
Work Order Number: 2011-03

By

Otis and Associates, PC

April 18, 2013

Association of Illinois Electric Cooperatives
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SECTION I: INDEPENDENT ACCOUNTANTS' REPORT

OTIS AND ASSOCIATES, P.C.
Certified Public Accountants & Management Consultants
3311 Toledo Terrace, Suite C-205, Hyattsville, MD 20782

To: Inspector General
U.S. Department of Energy

We have examined The Association of Illinois Electric Cooperatives' compliance with Federal and State laws and regulations, and Program guidelines applicable to the State Energy Program funded by the American Recovery and Reinvestment Act of 2009. The Association of Illinois Electric Cooperatives is responsible for implementing its grant from the State of Illinois under the State Energy Program in compliance with these laws and regulations and Program guidelines. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the U.S. Government Accountability Office; and, accordingly, included examining, on a test basis, evidence supporting management's compliance with relevant American Recovery and Reinvestment Act of 2009 guidelines for the State Energy Program; Federal and State laws and regulations, Program guidelines; and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

Because of the inherent limitations in any internal control structure or financial management system, noncompliance due to error or fraud may occur and not be detected. Also, projections of any evaluation of compliance to future periods are subject to the risk that the internal control structure or financial management system may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

In our opinion, except for the weakness described in Section V of this report, the Association of Illinois Electric Cooperatives complied, in all material respects, with the aforementioned requirements and guidelines, relative to the State Energy Program funded by the American Recovery and Reinvestment Act of 2009 for the period January 1, 2010 through September 30, 2011.

Otis and Associates, P.C.

Otis and Associates, PC
Takoma Park, MD
October 7, 2011

Member of American Institute of Certified Public Accountants
Phone (301) 891-3363 Fax (301) 891-3526 email: ndy@otiscpa.com

SECTION II: BACKGROUND

The American Recovery and Reinvestment Act of 2009 (Recovery Act) was signed into law on February 17, 2009. The Recovery Act authorizes funding to various economic sectors and Federal programs. The State Energy Program (SEP), under the U.S. Department of Energy (Department), received $3.1 billion to achieve the purposes set forth in the Recovery Act, including the preservation and creation of jobs, promotion of economic recovery, and the reduction of energy consumption.

The SEP is a categorical formula grant program administered by the Department under a regulatory framework laid out in 10 CFR 600.6(b) and 10 CFR Part 420, *State Energy Program*. The Department's SEP objectives are as follows:

- Increase energy efficiency to reduce cost and consumption for consumers, businesses and government;
- Reduce reliance on imported energy;
- Improve the reliability of electricity and fuel supply and the delivery of energy services; and,
- Reduce the impact of energy production and use on the environment.

The Department's Office of Inspector General (OIG) contracted with Otis and Associates, PC, to perform an Examination-Level Attestation Engagement on the Recovery Act's SEP services provided by selected State of Illinois sub-grantees. The Association of Illinois Electric Cooperatives (AIEC) is one of the four State of Illinois sub-grantees selected.

Under the Recovery Act, the State of Illinois received an allocation of $101,321,000 from the Department for the SEP. The State of Illinois allocated this funding among eight different programs. The "Electric Efficiency" Program was allocated $4,934,499 through the Illinois Department of Commerce and Economic Opportunity (DCEO). This Program is to provide incentives for projects that increase electric energy efficiency of Federal, state, and local governments, schools, and other municipal facilities. Also, the Program provided grant funds to non-investor owned utilities to develop and administer electric efficiency programs that benefit customers or non-investor owned utilities. AIEC received $2,500,000 to provide home energy efficiency improvement services to 28 electric cooperative customers serving nearly 300,000 homes, farms and businesses, based on energy assessments performed by and recommendations made by the cooperatives, in the form of rebates to the customers for completing the recommendations made in their energy assessment.

AIEC was organized in 1942 and is the service organization for member electric and telephone cooperatives for the State of Illinois and its associate organizations. The AIEC mission is to provide leadership, expertise, and unity of purpose in support of the cooperative utilities of the State of Illinois and its efforts to improve the quality of life for its members.

SECTION II: BACKGROUND CONT.

The board of directors consists of 28 member cooperatives, representing each of its member-systems, 25 electric distribution cooperatives and 3 power generation and transmission cooperatives. One director is elected by and from the board of directors of each member-cooperative. The six telephone cooperatives operating in Illinois are non-voting members of the AIEC.

PROGRAM BUDGET PER GRANT AGREEMENT

Budget Description	Initial Approved Budget	Budget Modification	Modified Approved Budget
Administration	$ 75,000	$ 25,000	$ 100,000
Purchase of Services	$ 25,000	$ 0	$ 25,000
Equipment/Material Cost	$1,400,000	$ 975,000	$2,375,000
Cash Match	$ 375,000	$ 250,000	$ 625,000
Total	$1,875,000	$1, 250,000	$3,125,000

PROGRAM EXPENDITURES AS OF SEPTEMBER 30, 2011

Expense Category	Amount
Administration	$ 79,530
Purchase of Services	$ 12,856
Equipment/Material Costs	$2,423,345
Cash Match	$ 665,150
Total	$3,180,881

PROGRAM REIMBURSEMENTS AS OF SEPTEMBER 30, 2011

Grant Award Number	Amount	Grant Effective Date	Grant Completion Date
DE-EE0000119	$2,466,488	January 1, 2010	December 31, 2011

SECTION III: CLASSIFICATION OF FINDING

Material Weakness

A material weakness is a significant deficiency, or combination of significant deficiencies, that result in more than a remote likelihood that a material misstatement of the subject matter will not be prevented or detected.

Significant Deficiency

A significant deficiency is a deficiency in internal control, or combination of deficiencies, that would adversely affect AIEC's ability to initiate, authorize, record, process, or report data reliably, in accordance with the applicable criteria or framework, such that there is more than a remote likelihood that a misstatement of the subject matter that is more than inconsequential will not be prevented or detected. There are no findings in our report classified as a significant deficiency.

Advisory Comment

For purposes of this engagement, an advisory comment represents a control deficiency that is not significant enough to adversely affect AIEC's ability to record, process, summarize, and report data reliably. There are no findings in our report classified as an advisory comment.

SECTION IV: SUMMARY OF FINDING

Finding 1: Inadequate monitoring of member cooperatives to ensure delivery of energy efficiency upgrades or services performed for which rebates were issued – Material Weakness.

SECTION V: MATERIAL WEAKNESS

Finding 1: Inadequate monitoring of member cooperatives to ensure delivery of energy efficiency upgrades or services performed for which rebates were issued – Material Weakness.

Condition

AIEC did not adequately monitor its member cooperatives to ensure that rebate recipients actually installed or performed the services for which they received rebates. Our review of sample rebate payments made by AIEC to Corn Belt Energy Corporation, a member cooperative, for its customers, showed that neither AIEC nor Corn Belt Energy Corporation had performed any site visits to ascertain that equipment paid for was purchased and installed, as represented by the customers. Further, until our review, AIEC was unaware that Corn Belt, in some cases, had issued rebates based on estimated expenditures for energy savings measures. Our interview of the AIEC's Vice President of Operations also indicated that AIEC did not ensure its 25 member cooperatives, that issued rebates totaling approximately $2,423,345, certified that rebate recipients actually purchased and installed equipment or performed the services for which they received rebates. AIEC's management indicated that they visited a few cooperatives, but did not maintain any documentation on the visits or nature of the services performed and date services were completed.

In accordance with the Grant Agreement Part II, Scope of Work, the grantee is required to provide rebates for energy efficiency upgrades and oversee responsibility for monitoring projects and certifying that work is completed by qualified providers.

Cause

AIEC did not have a procedure to monitor the quality of work performed, and ensure that services for which rebates were issued were actually performed. AIEC management indicated that it will develop a procedure.

Effect

As a result of the condition noted above, AIEC and its member cooperatives may have paid for equipment and services that were not purchased or performed by the customers.

Recommendation:

1.1 We recommend that the management of AIEC develop procedures to adequately monitor the activities of its member cooperatives.

SECTION V: MATERIAL WEAKNESS CONT.

Management Comments and Auditors' Analysis:

AIEC's management concurred with the finding and recommendation and stated that it had subsequently verified, through its member cooperatives, that work had actually been completed on a sample of rebates. The verification test work did not find any exceptions.

We consider AIEC's management action to be adequate.

SECTION VI: SUB-GRANTEE'S RESPONSE (FULL TEXT)

Association of Illinois Electric Cooperatives

August 6, 2012

Mr. Ndy Otis, CPA

Otis and Associates PC

6875 New Hampshire Ave., Ste 200

Takoma Park, MD 20912

Hello Ndy:

This is a written follow up to our phone conference last week with Lateef, and Mark and Bill from DOE. As we discussed during the call, the AIEC acknowledges and accepts your audit finding that the AIEC failed to provide adequate monitoring of its member-cooperatives during the HomE program, which was part of the Illinois State Energy Plan.

As we all agreed during our "exit conference" last fall when you were in Springfield to audit the HomE program, the AIEC would provide its member cooperatives with a random list of members who received HomE rebates for energy efficiency measures. Each co-op would then verify the completion of the work and "sign off" that the energy efficiency measure(s) had been completed.

This work was completed within a month of your visit to Springfield last fall. Co-op personnel did 269 of these follow up verifications. In each case, co-op personnel documented that the funded energy efficiency measures were completed/installed. In other words, if insulation was funded through HomE, they verified that the insulation was in place. If a new HVAC system was funded through HomE, they verified that the new system was installed and in place.

The verification project resulted in 100 percent compliance of those projects selected for the verification/follow up. Electronic scans of all 269 signed verification forms have been sent to you.

If we can provide any additional information or assistance, please call upon us.

Sincerely,

John Freitag

John Freitag

AIEC Vice President/Operations

P.O. Box 3787, Springfield, IL 62708-3787 • Telephone: (217) 529-5561 • Fax: (217) 529-5610 • www.aiec.coop

Report on Examination-Level Attestation Engagement

Of

Bley, LLC
American Recovery and Reinvestment Act
State Energy Program

Performed for the U.S. Department of Energy,
Office of Inspector General

Under

Contract Number: DE-IG0000018
Work Order Number: 2011-03

By

Otis and Associates, PC

April 18, 2013

Bley, LLC
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SECTION I: INDEPENDENT ACCOUNTANTS' REPORT

OTIS AND ASSOCIATES, P.C.
Certified Public Accountants & Management Consultants
3311 Toledo Terrace, Suite C-205, Hyattsville, MD 20782

To: Inspector General
U.S. Department of Energy

We have examined Bley, LLC's compliance with Federal and State laws and regulations, and Program guidelines applicable to the State Energy Program funded by the American Recovery and Reinvestment Act of 2009. Bley, LLC is responsible for implementing its grant from the State of Illinois under the State Energy Program in compliance with these laws and regulations and Program guidelines. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the U.S. Government Accountability Office; and, accordingly, included examining, on a test basis, evidence supporting management's compliance with relevant American Recovery and Reinvestment Act of 2009 guidelines for the State Energy Program; Federal and State laws and regulations; Program guidelines; and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

Because of the inherent limitations in any internal control structure or financial management system, noncompliance due to error or fraud may occur and not be detected. Also, projections of any evaluation of compliance to future periods are subject to the risk that the internal control structure or financial management system may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

In our opinion, except for the weaknesses described in Section V of this report, Bley, LLC complied, in all material respects, with the aforementioned requirements and guidelines relative to the State Energy Program funded by the American Recovery and Reinvestment Act of 2009 for the period February 1, 2010 to September 30, 2011.

Otis and Associates, P.C.

Otis and Associates, PC
Takoma Park, MD

December 2, 2011

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SECTION II: BACKGROUND

The American Recovery and Reinvestment Act of 2009 (Recovery Act) was signed into law on February 17, 2009. The Recovery Act authorizes funding to various economic sectors and Federal programs. The State Energy Program (SEP), under the U.S. Department of Energy (Department), received $3.1 billion to achieve the purposes set forth in the Recovery Act, including the preservation and creation of jobs, promotion of economic recovery, and reducing energy consumption.

The SEP is a categorical formula grant program administered by the Department under a regulatory framework laid out in 10 CFR 600.6(b) and 10 CFR Part 420, *State Energy Program*. The Department's SEP objectives are as follows:

- Increase energy efficiency to reduce cost and consumption for consumers, businesses and government;
- Reduce reliance on imported energy;
- Improve the reliability of electricity and fuel supply and the delivery of energy services; and,
- Reduce the impact of energy production and use on the environment.

The Department's Office of Inspector General (OIG), contracted with Otis and Associates, PC, to perform an Examination Level Attestation Engagement on the Recovery Act's SEP services provided by the State of Illinois sub-grantees. Bley, LLC (Bley), was one of the four State of Illinois sub-grantees selected.

Under the Recovery Act, the State of Illinois received an allocation of $101,321,000 from the Department for the SEP. The State of Illinois allocated this funding among eight different programs. The "Green Industry Business Development" Program was allocated $47,240,284 through the Illinois Department of Commerce and Economic Opportunity (DCEO). This Program is for Illinois-based manufacturing companies to implement projects that reduce carbon emissions and increase renewable energy. Bley was awarded $5,000,000 under this Program, which required Bley to provide a matching cost of approximately $8,185,600. The project was scheduled to be completed on January 31, 2012.

Bley was founded in 1966, and specializes in providing state-of-the-art technology in machining; computer numerical controlled machining and machine building. Additionally, Bley provides engineering and design services with a specialization in large high-precision products. Bley serves the aerospace, renewable energy, oil and gas, heavy transportation, mining, defense, construction, packaging, and medical industries. Using the Recovery Act funds, Bley installed new state-of-the-art equipment for utility scale wind turbine components. This equipment enables Bley to increase its current capacity of, approximately 1.5 megawatt turbines, to 4.5 megawatt turbines.

SECTION II: BACKGROUND CONT.

PROJECT BUDGET PER GRANT AGREEMENT

Budget Description	Amount
Equipment/Material Costs	$ 5,000,000
Cash Match	$ 8,185,600
Total	$13,185,600

PROJECT EXPENDITURES AS OF SEPTEMBER 30, 2011

Expense Category	Amount
Equipment/Material Costs	$4,986,289
Cash Match	$3,579,879
Total	$8,566,168

PROGRAM REIMBURSEMENTS AS OF SEPTEMBER 30, 2011

Grant Award Number	Amount	Grant Effective Date	Grant Completion Date
DE-EE0000119	$4,878,462	February 1, 2010	January 31, 2012

SECTION III: CLASSIFICATION OF FINDINGS

Material Weakness

A material weakness is a significant deficiency, or combination of significant deficiencies, that result in more than a remote likelihood that a material misstatement of the subject matter will not be prevented or detected. There are no findings in our report classified as a material weakness.

Significant Deficiency

A significant deficiency is a deficiency in internal control, or combination of deficiencies, that would adversely affect Bley's ability to initiate, authorize, record, process, or report data reliably, in accordance with the applicable criteria or framework, such that there is more than a remote likelihood that a misstatement of the subject matter that is more than inconsequential will not be prevented or detected.

Advisory Comment

For purposes of this engagement, an advisory comment represents a control deficiency that is not significant enough to adversely affect Bley's ability to record, process, summarize, and report data reliably. There are no findings in our report classified as an advisory comment.

SECTION IV: SUMMARY OF FINDINGS

Finding 1: Recipient did not separately track Recovery Act costs - Significant Deficiency

Finding 2: Equipment was purchased without competition - Significant Deficiency

SECTION V: SIGNIFICANT DEFICIENCIES

Finding 1: Recipient did not separately track Recovery Act costs - Significant Deficiency

Condition

Bley did not establish a separate account code to segregate Recovery Act revenue and expenditures, as required. The company's general ledger and chart of accounts had not been modified to ensure Recovery Act costs were separated from other costs incurred. Further, Bley's timekeeping records did not identify and segregate Recovery Act hours worked from time spent on other projects. When we requested documentation supporting Recovery Act expenditures, Bley developed a spreadsheet detailing costs incurred for labor and materials. To develop the spreadsheet, Bley examined prior transactions, traced them to supporting documents such as invoices, receipts, and timecards, and identified costs incurred that directly related to the Recovery Act. We reviewed the spreadsheet and the allocations for reasonableness, as well as a sample of costs incurred, and found no exceptions.

Part VI-B-6.5 of the grant agreement, *Segregation of Funds and Costs*, states that the grantee must segregate the obligations and expenditures related to funding under the Recovery Act. The grantee must have a financial and accounting system that segregates, tracks, and maintains the Recovery Act funds separate and apart from other revenue streams. No part of the funds from the Recovery Act are allowed to be co-mingled with any other funds or used for a purpose other than making payments for costs allowable for Recovery Act projects. Recovery Act funds may be used in conjunction with other funding sources as necessary to complete projects, but tracking and reporting must be separate to comply with the law and Office of Management and Budget guidance.

Cause

Even though it was stipulated in the grant agreement, Bley's management stated that it was not aware of the requirement track and record Recovery Act funds separately.

Effect

As a result of the condition noted above, the transparency required under the Recovery Act was not achieved.

Recommendation:

1.1 We recommend that the management of Bley create a special accounting code for all Recovery Act grant-related activities.

SECTION V: SIGNIFICANT DEFICIENCIES CONT.

Management Response and Auditors' Analysis:

Bley's management concurred with the findings and recommendation, and stated that it will establish separate accounting codes that will clearly distinguish the activities of future federal and state grants.

We consider Bley's management action to be adequate.

SECTION V: SIGNIFICANT DEFICIENCIES CONT.

Finding 2: Equipment was purchased without competition - Significant Deficiency

Condition

During our procurement review, we noted that Bley had purchased nine pieces of equipment, totaling about $2.8 million, without the benefit of competition and without justifying why soliciting bids was not practical.

The Recovery Act provisions, which were incorporated in the grant agreement by reference, required grantees to competitively award contracts financed with Recovery Act funds to the maximum extent practicable. Bley's procedures allowed for less than full competition provided that a justification was documented in the file.

Cause

Bley management stated that it did not use competition because the equipment acquired was of special design and manufactured by very few companies. Also, Bley stated that some equipment had to be purchased from companies authorized to serve designated jurisdictions. While these appear to be reasonable justifications, Bley did not document the justifications at the time purchase decisions were made as required by its procedures.

Effect

As a result of the condition noted above, there is a risk that Bley did not get the best values for the equipment.

Recommendation:

2.1 We recommend that the management of Bley follow the Recovery Act guidance on competition when purchasing equipment.

Management Response and Auditors' Analysis:

Bley's management concurred with the findings and recommendation. Bley stated that they would document their selection methods, identify the requirements and evaluation factors, and summarize their negotiations with vendors.

We consider Bley's management action to be adequate.

SECTION VI: SUB-GRANTEE'S RESPONSE (FULL TEXT)

BLEY

Precision Machining
Machine Building
Engineering
Fabrication
Assembly

To: U.S. department of Energy, Office of Inspector General
Contract #: DE-IG0000018
Work Order #: 2011-03

August 17, 2012

Thank you for the opportunity to review the subject report. Bley, LLC is proud of its effort to implement the Recovery Act in a prudent and expeditious manner in order to support the growth of our business as part of the economic recovery. We like to note that we appreciate the Office of Inspector General ' help in assisting Bley, LLC to ensure that the program was effectively managed. The management of Bley concurs with the findings as listed below.

Finding 1: Recipient did not Separately Track Recovery Act Costs- Significant Deficiencies

We agree with the finding. In the future, we will establish separate accounts that are clearly distinguishable to track this activity. Bley will be put in place controls to ensure that Recovery act funds are not commingled. Enhanced internal controls will be in place to mitigate the risks of fraud, waste and abuse .The special accounting code will be in place for all future Recovery Act grant- related activity.

Finding 2: Equipment was purchased without competition- Significant Deficiency

We agree with the finding. In the future we will provide and document :

1) The selection method for procurement.
2) Identify all requirements and other evaluating factors in the invitation of bids.
3) Include a summary of the profit negotiations with the vendors in the cost estimate of our purchase.

Thank you for the opportunity to review the draft report. Please let us know if you need additional information or have any questions regarding our response.

Sincerely:

Krishna Rajagopal
Manager: Bley, LLC

700 Chase Ave., Elk Grove Village, IL 60007 Phone: 847-437-0022 Fax 847-437-0592

www.bley.com

Report on Examination-Level Attestation Engagement

Of

Funk Linko, Inc.
American Recovery and Reinvestment Act
State Energy Program

Performed for the U.S. Department of Energy,
Office of Inspector General

Under

Contract Number: DE-IG0000018
Work Order Number: 2011-03

By

Otis and Associates, PC

April 18, 2013

Funk Linko, Inc.
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SECTION I: INDEPENDENT ACCOUNTANTS' REPORT

OTIS AND ASSOCIATES, P.C.
Certified Public Accountants & Management Consultants
3311 Toledo Terrace, Suite C-205, Hyattsville, MD 20782

To: Inspector General
U.S. Department of Energy

We have examined Funk Linko, Inc.'s compliance with Federal and State laws and regulations, and Program guidelines applicable to the State Energy Program funded by the American Recovery and Reinvestment Act of 2009. Funk Linko, Inc. is responsible for implementing its grant from the State of Illinois under the State Energy Program in compliance with these laws and regulations and Program guidelines. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the U.S. Government Accountability Office; and, accordingly, included examining, on a test basis, evidence supporting management's compliance with relevant American Recovery and Reinvestment Act of 2009 guidelines for the State Energy Program; Federal and State laws and regulations; Program guidelines; and, performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

Because of the inherent limitations in any internal control structure or financial management system, noncompliance due to error or fraud may occur and not be detected. Also, projections of any evaluation of compliance to future periods are subject to the risk that the internal control structure or financial management system may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

In our opinion, except for the weaknesses described in Sections V and VI of this report, Funk Linko, Inc. complied, in all material respects, with the aforementioned requirements and guidelines, relative to the State Energy Program funded by the American Recovery and Reinvestment Act of 2009 for the period February 1, 2010 to September 30, 2011.

Otis and Associates, P.C.

Otis and Associates, PC
Takoma Park, MD

October 14, 2011

Member of American Institute of Certified Public Accountants
Phone (301) 891-3363 Fax (301) 891-3526 email: ndy@otiscpa.com

SECTION II: BACKGROUND

The American Recovery and Reinvestment Act of 2009 (Recovery Act) was signed into law on February 17, 2009. The Recovery Act authorizes funding to various economic sectors and Federal programs. The State Energy Program (SEP), under the U.S. Department of Energy (Department), received $3.1 billion to achieve the purposes set forth in the Recovery Act, including the preservation and creation of jobs, promotion of economic recovery, and reducing energy consumption.

The SEP is a categorical formula grant program administered by the Department under a regulatory framework laid out in 10 CFR 600.6(b) and 10 CFR Part 420, *State Energy Program*. The Department's SEP objectives are as follows:

- Increase energy efficiency to reduce cost and consumption for consumers, businesses and government;
- Reduce reliance on imported energy;
- Improve the reliability of electricity and fuel supply and the delivery of energy services; and,
- Reduce the impact of energy production and use on the environment.

The Department's Office of Inspector General (OIG) contracted with Otis and Associates, PC, to perform an Examination-Level Attestation Engagement on the Recovery Act's SEP services provided by the State of Illinois sub-grantees. Funk Linko, Inc. (Funk Linko) was one of the four State of Illinois sub-grantees selected.

Under the Recovery Act, the State of Illinois received an allocation of $101,321,000 from the Department for the SEP. The State of Illinois allocated this funding among eight different programs. The "Green Industry Business Development" Program was allocated $47,240,284 through the State of Illinois Department of Commerce and Economic Opportunity (DCEO). This Program is for State of Illinois based manufacturing companies to implement projects that improve energy efficiency in their operations. Funk Linko was awarded $5 million under this Program, which required Funk Linko to provide a matching cost of approximately $5 million. Funk Linko partnered with National Railway Equipment Corporation and Microtech Machine Company, Inc. to purchase and install equipment that will be used in the production of low emission, energy efficient rail locomotives and components for wind power generation. The project was scheduled to be completed on January 31, 2012.

Funk Linko, formerly Funk Forging, was founded in 1925. Funk Linko is a woman- and minority-owned enterprise, and one of the leading manufacturers of sign poles, lighting poles, and undercarriages for locomotives. Funk Linko also specializes in steel fabrication manufacturing, and produces specialized steel products for major oil companies in the United States and overseas. Since 1925, Funk Linko has designed and manufactured lighting and sign posts for a variety of industries and commercial uses. Recently, Funk Linko began focusing its business on fabrication of under-frames and components for energy efficiency railway products, as well as small to middle size wind turbine towers.

SECTION II: BACKGROUND CONT.

PROJECT BUDGET PER GRANT AGREEMENT

Budget Description	Amount
Equipment/Material Costs	$ 5,000,000
Cash Match	$ 5,027,000
Total	$10,027,000

PROJECT EXPENDITURES AS SEPTEMBER 30, 2011

Expense Category	Amount
Equipment/Material Costs	$4,767,326
Cash Match	$3,341,687
Total	$8,109,013

SECTION III: CLASSIFICATION OF FINDINGS

Material Weakness

A material weakness is a significant deficiency, or combination of significant deficiencies, that result in more than a remote likelihood that a material misstatement of the subject matter will not be prevented or detected.

Significant Deficiency

A significant deficiency is a deficiency in internal control, or combination of deficiencies, that would adversely affect Funk Linko's ability to initiate, authorize, record, process, or report data reliably, in accordance with the applicable criteria or framework, such that there is more than a remote likelihood that a misstatement of the subject matter that is more than inconsequential will not be prevented or detected.

Advisory Comment

For purposes of this engagement, an advisory comment represents a control deficiency that is not significant enough to adversely affect Funk Linko's ability to record, process, summarize, and report data reliably. There are no findings in our report classified as an advisory comment.

SECTION IV: SUMMARY OF FINDINGS

Finding 1: Matching costs were not properly supported - Material Weakness

Finding 2: Inadequate documentation evidencing sufficient competition - Significant Deficiency

SECTION V: MATERIAL WEAKNESS

Finding 1: Matching costs were not properly supported - Material Weakness

Condition

Our review of costs incurred by Funk Linko and its teaming partners indicated noncompliance with State of Illinois' (Illinois) grant provisions requiring matching fund contributions of about 50 percent ($5 million) of estimated project funding. The Department waived a cost share requirement for the State Energy Program, but encouraged State recipients to develop plans involving a high degree of leveraging. Illinois accomplished this leveraging by requiring, for example, Funk Linko to provide a cost match. Although Funk Linko represented that it provided $3.3 million in matching funds as of September 30, 2011, the company did not have documentation to support the amount claimed.

At our request, Funk Linko gathered documentation reportedly supporting some of the matching contributions claimed. Specifically, the company provided invoices for $1.1 million of the $3.3 million claimed. Of the $1.1 million, we identified $842,000 in questionable costs. For example, we found costs unrelated to the grant, including a loan to a third party of approximately $185,000; rent payments of approximately $309,000 to a third party; and, payments on a lease for a BMW automobile totaling nearly $15,000. Matching fund contributions are important to ensure recipients are fully invested in the success of their projects and Federal funds are leveraged to the maximum extent practicable. The grant agreement states that the cash match must include expenditures directly related to the project. Also, Federal regulations require that such costs be necessary and reasonable for the proper and efficient accomplishment of the project or program objectives.

Cause

Funk Linko's management stated that it was not aware of the requirement to account for matching costs prior to the expiration of the grant agreement; and therefore, had not adequately tracked the matching costs claimed by teaming partners to ensure compliance with the terms and conditions of the grant. Despite the fact that it had already reported matching costs to the State, management requested that an audit of the costs be delayed until the expiration of the grant agreement. Additionally, although Funk Linko gathered documentation from its teaming partners to respond to our request for cost match support, Funk Linko officials stated that they did not review the documentation provided by the partners to ensure that the costs were reasonable and allocable to the project.

Effect

Unsupported matching costs claimed increase the risk of fraud, waste and abuse. As a result of the condition noted above, we questioned the $3 million in matching costs we identified as unrelated to the grant or unsupported. Further, we questioned the corresponding level of

SECTION V: MATERIAL WEAKNESS CONT.

Recovery Act funding claimed by Funk Linko and its teaming partners, since cost matching the Recovery Act funding was a condition of the Illinois' agreement with its sub-recipients.

As a result of our audit, Funk Linko officials worked with the State to resolve cost match issues. Although the State disallowed certain costs, such as the costs related to the loan, rent, and BMW, the State accepted costs sufficient to satisfy the project's cost match requirement.

Recommendation:

1.1 We recommend that Funk Linko develop a process to ensure that it adequately documents any cash match reported on Federal and State grants.

Management Comments and Auditors' Analysis:

Funk Linko concurred with the recommendation and stated it has instituted a policy to maintain full documentation of match expenditures with a quarterly review of such documentation.

We consider Funk Linko's response to be adequate.

SECTION VI: SIGNIFICANT DEFICIENCY

Finding 2: Inadequate documentation evidencing sufficient competition - Significant Deficiency

Condition

During our review of Funk Linko's procurement process, we noted that the company had purchased equipment from firms in the amount of $2,355,392 without documenting that it had obtained the best price. Contrary to Recovery Act provisions incorporated by reference in the grant agreement, the company had not ensured competition to the maximum extent practical. Specifically, Funk Linko had neither solicited bids nor justified why soliciting bids was not practical. Funk Linko officials stated that they purchased equipment at the best available price since they negotiated the price directly with the vendors. Management also noted that some of the equipment purchased was of a special design available only from limited sources. However, we were unable to verify these claims given the lack of documentation, including required cost price analyses or a sole source justification.

Cause

Even though it was stipulated in the grant agreement, Funk Linko's management stated that they were not aware of the Recovery Act requirement to maximize competition to the maximum extent practical.

Effect

As a result of the condition noted above, Funk Linko could not demonstrate that best value was received for the equipment purchased with Recovery Act funds.

Recommendation:

2.1 We recommend that Funk Linko's management ensure compliance with Federal procurement policies.

Management Response and Auditors' Analysis:

Funk Linko concurred with the recommendation and stated it has implemented a policy to maintain full documentation of competitive bids for grant equipment purchased with Federal funds with a quarterly review of such documentation.

We consider Funk Linko's response to be adequate.

SECTION VII: SUB-GRANTEE'S RESPONSE (FULL TEXT)

FUNK LINKO

October 16, 2012

From: Viola Linko, CEO, Funk Linko

Re: Audit Response to Otis and Associates
Illinois Grant Number 09-463020

Funk Linko is responding to the "Report on Examination Level Attestation Engagement of Funk Linko, Inc." drafted by Otis and Associates regarding the Illinois State Energy Grant as funded by the American Recovery and Reinvestment Act (ARRA), dated September 28, 2012 based on the interim audit site visit of October 10 to October 14, 2011.

The above grant was signed off on as complete by Ms. Alyson Grady, Grant Officer, Department of Commerce and Economic Opportunity (DCEO) for the State of Illinois at a site visits in May of 2012 to each of the facilities where grant funded equipment was located.

Finding 1: Matching costs were not properly supported - Material Weakness

The requirement for a matching funds was a State of Illinois condition placed on recipients of State Energy Grants funded through ARRA. While the target was to have a 1:1 match, the requirement was to have a cash match of 50% of the award amount (for a match of $2,500,000 in the case of this grant).

When Otis and Associates came to Funk Linko in October 2011 for the interim audit, the match documents that were reviewed were the ones collected to that point. All documentation associated with the Funk Linko and NRE portions of the match were available and were associated with allowable expenses. The documentation submitted by Microtech for its portion of matching funding had not been reviewed by DECO. It was anticipated that some of the expenses submitted would not be approved, but at that date there had been no final review of the match submissions by the DCEO Grant Officer.

Of the match documents that were submitted by Microtech $709,172.21 were approved in a review of all match documentation conducted by Ms. Grady in February 2012. None of the match from Microtech that Otis and Associates questioned was part of the final match amount of $709,172.21 attributable to Microtech.

The approved cash match total at the conclusion of the grant came to $3,085,564.10, ~ 61% of the award amount as cash match. That level of match was accepted by DCEO as fulfilling the State requirement. The final financial report submitted in February 2012 for that grant was accepted with that level of match.

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SECTION VII: SUB-GRANTEE'S RESPONSE (FULL TEXT) CONT.

Funk Linko has, subsequent to the interim site audit, instituted a policy of maintaining full documentation of match expenditures with a quarterly review of such documentation.

Finding 2: Inadequate documentation evidencing sufficient competition - Significant Deficiency

Advisory discussions with DCEO and DOE (Golden Office) of compulsory process and documentation for equipment purchase did not include a requirement for obtaining and registering competitive bids for equipment purchases.

Every effort was made to maximize the use of funds by obtaining best prices for all equipment, including customized equipment that is by its nature sole source. Bid documentation for successful bidders was provided to the State of Illinois with every request for draw down payment.

Funk Linko has, subsequent to the interim site audit, instituted a policy of maintaining full documentation of competitive bids for grant equipment purchased with federal funds with a quarterly review of such documentation.

Nicola Linko

Report on Examination-Level Attestation Engagement

Of

Abengoa Bioenergy Operations, LLC
American Recovery and Reinvestment Act
State Energy Program

Performed for the U.S. Department of Energy,
Office of Inspector General

Under

Contract Number: DE-IG0000018
Work Order Number: 2011-03

By

Otis and Associates, PC

April 18, 2013

Abengoa Bioenergy Operations, LLC
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SECTION I: INDEPENDENT ACCOUNTANTS' REPORT

OTIS AND ASSOCIATES, P.C.
Certified Public Accountants & Management Consultants
3311 Toledo Terrace, Suite C-205, Hyattsville, MD 20782

To: Inspector General
U.S. Department of Energy

We have examined Abengoa Bioenergy Operations, LLC's compliance with Federal and State laws and regulations, and Program guidelines applicable to the State Energy Program funded by the American Recovery and Reinvestment Act of 2009. Abengoa Bioenergy Operations, LLC is responsible for implementing its grant from the State of Illinois under the State Energy Program in compliance with these laws and regulations and Program guidelines. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the U.S. Government Accountability Office; and, accordingly, included examining, on a test basis, evidence supporting management's compliance with relevant American Recovery and Reinvestment Act of 2009 guidelines for the State Energy Program; Federal and State laws and regulations; Program guidelines; and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

Because of the inherent limitations in any internal control structure or financial management system, noncompliance due to error or fraud may occur and not be detected. Also, projections of any evaluation of compliance to future periods are subject to the risk that the internal control structure or financial management system may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

In our opinion, except for the weaknesses described in Section V of this report, Abengoa Bioenergy Operations, LLC complied, in all material respects, with the aforementioned requirements and guidelines, relative to the State Energy Program funded by the American Recovery and Reinvestment Act of 2009 for the period January 1, 2010 to October 31, 2011.

Otis and Associates, P.C.

Otis and Associates, PC
Takoma Park, MD

November 11, 2011

Member of American Institute of Certified Public Accountants
Phone (301) 891-3363 Fax (301) 891-3526 email: ndy@otiscpa.com

SECTION II: BACKGROUND

The American Recovery and Reinvestment Act of 2009 (Recovery Act) was signed into law on February 17, 2009. The Recovery Act authorizes funding to various economic sectors and Federal programs. The State Energy Program (SEP), under the U.S. Department of Energy (Department), received $3.1 billion to achieve the purposes set forth in the Recovery Act, including the preservation and creation of jobs, promotion of economic recovery, and reducing energy consumption.

The SEP is a categorical formula grant program administered by the Department under a regulatory framework laid out in 10 CFR 600.6(b) and 10 CFR Part 420; *State Energy Program*. The Department's SEP objectives are as follows:

- Increase energy efficiency to reduce cost and consumption for consumers, businesses and government;
- Reduce reliance on imported energy;
- Improve the reliability of electricity and fuel supply and the delivery of energy services; and,
- Reduce the impact of energy production and use on the environment.

The Department's Office of Inspector General (OIG) contracted with Otis and Associates, PC, to perform an Examination-Level Attestation Engagement on the Recovery Act's SEP services provided by the State of Illinois sub-grantees. Abengoa Bioenergy Operations, LLC (Abengoa) was one of the four State of Illinois sub-grantees selected.

Under the Recovery Act, the State of Illinois received an allocation of $101,321,000 from the Department for the SEP. The State of Illinois allocated this funding among eight different programs. The "Large Customer Energy Efficiency" Program was allocated $15,977,973 through the State of Illinois Department of Commerce and Economic Opportunity (DCEO). This Program is to implement cost effective natural gas and other thermal efficiency measures at the State of Illinois industries and other large energy users. Abengoa was awarded $2,000,000 under this Program, which required Abengoa to provide a matching cost of approximately $10,150,296 for the installation of energy efficiency measures into the company's new ethanol plant located in Madison, Illinois. The project was completed in December 2009.

SECTION II: BACKGROUND CONT.

PROJECT BUDGET PER GRANT AGREEMENT

Budget Description	Amount
Purchase of Services	$ 1,400,000
Equipment/Material Costs	$ 600,000
Cash Match	$10,150,296
Total	$12,150,296

PROJECT EXPENDITURES AS OF JUNE 30, 2011

Expense Category	Amount
Purchase of Services	$ 1,400,000
Equipment/Material Costs	$ 600,000
Cash Match	$12,301,300
Total	$14,301,300

PROGRAM REIMBURSMENTS AS OF JUNE 30, 2011

Grant Award Number	Amount	Grant Effective Date	Grant Completion Date
DE-EE0000119	$2,000,000	April 19, 2010	Dec. 1, 2011

SECTION III: CLASSIFICATION OF FINDING

Material Weakness

A material weakness is a significant deficiency, or combination of significant deficiencies, that result in more than a remote likelihood that a material misstatement of the subject matter will not be prevented or detected.

Significant Deficiency

A significant deficiency is a deficiency in internal control, or combination of deficiencies, that would adversely affect Abengoa's ability to initiate, authorize, record, process, or report data reliably, in accordance with the applicable criteria or framework, such that there is more than a remote likelihood that a misstatement of the subject matter that is more than inconsequential will not be prevented or detected. There are no findings in our report classified as a significant deficiency.

Advisory Comment

For purposes of this engagement, an advisory comment represents a control deficiency that is not significant enough to adversely affect Abengoa's ability to record, process, summarize, and report data reliably. There are no findings in our report classified as an advisory comment.

SECTION IV: SUMMARY OF FINDING

Finding 1: Noncompliance with Recovery Act requirements – Material Weakness

SECTION V: MATERIAL WEAKNESS

Finding 1: **Noncompliance with Recovery Act requirements – Material Weakness**

Condition

Abengoa could not fully support that it had complied with requirements of its grant from the State of Illinois (State) to separately identify Recovery Act costs and pay prevailing wage rates to laborers. Further, Abengoa had not always solicited bids to ensure competition as required. Specifically, Abengoa:

- Had not separately accounted for Recovery Act costs incurred and claimed, as required under the terms and conditions of the grant. We noted that as of February 2010, Abengoa had claimed reimbursement for $2 million of the $12 million in costs reportedly incurred for its grant-funded project, but had not discretely segregated Recovery Act costs. While Recovery Act funds can be used in conjunction with other funding sources as necessary to complete projects, tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and Office of Management and Budget guidance. Separate accounting is important to ensure compliance with Recovery Act provisions such as paying prevailing wages under the Davis-Bacon Act (Act) and ensuring free and open competition for goods and services purchased.

- Had not provided certified payroll information to verify that wages paid to laborers complied with the Act, as contractually required. Consequently, we were unable to determine if the rates paid to laborers and mechanics were in compliance with the Act. The Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor. Based on its knowledge of union agreements, Abengoa management believes that its contractor and subcontractors paid prevailing wage rates. However, management was unable to provide any evidence to support that contention, such as a comparison of payroll information to prevailing wage rates.

- Had not always solicited bids to ensure competition or obtained approval for agreements with subcontractors as required. Abengoa awarded a contract to an affiliate, Abener, a company which in turn awarded five subcontracts without soliciting bids. The Recovery Act requires agencies to comply with laws and regulations governing the award of procurement contracts, including maximizing competition to the extent practicable in accordance with the Competition in Contracting Act of 1984. Furthermore, Abengoa did not obtain written approval from the State's project manager prior to entering into subcontractor agreements, as required by the terms and conditions of the grant.

SECTION V: MATERIAL WEAKNESS CONT.

Cause

The lack of support for compliance was caused, in large part, by the fact that the State had awarded the grant to Abengoa on April 26, 2010, long after the company had completed the entire project. Abengoa started the grant-related work in February of 2009 and completed it in December 2009. In fact, the company was allowed to claim costs incurred over a year prior to the execution of the agreement. Consequently, officials were reportedly not aware of Recovery Act requirements at the time they incurred the costs. In addition, Abengoa management stated that it had selected the project contractor and subcontractors prior to submitting a grant application to the State of Illinois. Additionally, although Abengoa entered into the grant for work that was already completed, it did not request waivers from DCEO on those terms and conditions for which it had not previously complied. Additionally, Abengoa officials faulted their subcontractor for awarding subcontracts without competition.

Effect

As a result of the condition noted above, Abengoa was unable to adequately support costs claimed and charged to the grant totaling $2 million, undermining the praiseworthy goals that recipients of Recovery Act funds be fully accountable for funds awarded and that the expenditure of funds be transparent to the public. Further, Abengoa's failure to ensure adequate competition and compliance with the Davis-Bacon Act prevailing wage rates increased the risk that costs were not reasonable and that contractors and subcontractors' employees were underpaid. Consequently, we question $2 million in costs claimed.

Recommendations:

While the project was completed and all funds have been spent, Abengoa should retro-actively prove it complied with the requirements to separately account for its use of Recovery Act funds and pay prevailing wage rates. Accordingly, we recommend that Abengoa officials provide:

1.1 Documentation that specifically identifies the costs funded by the grant to support the reasonableness of costs claimed or refund $2 million to the Department through the State.

1.2 Payroll records for all contractor and subcontractors' personnel charged to the grant for the State to review and ensure compliance with the Act.

We did not include recommendations to compete its subcontracts and obtain prior approval for them because it was not plausible to meet these requirements since Abengoa had awarded the subcontracts and completed the project prior to the grant award.

SECTION V: MATERIAL WEAKNESS CONT.

Management Response and Auditors' Analysis:

Abengoa, in its written response, did not concur with the finding but agreed to implement the recommendations to provide additional cost detail and certified payroll information. Abengoa believes that it materially complied with the terms and conditions of the grant. Specifically, Abengoa's response stated that it provided adequate supporting documentation for claimed costs to the auditors; competitively bid subcontractor work routinely; and, paid prevailing wages to its laborers and mechanics, and those of its subcontractors. Abengoa acknowledged that it was engaged in the project and incurred the costs prior to being subject to the Recovery Act requirements within the grant agreement, and therefore, due to the timing of the award, it could not comply with all the terms and conditions. As stated in the report, Abengoa remarked that the State's Department of Commerce and Economic Opportunity (DCEO) knew the work was completed and permitted it to claim costs incurred over a year prior to execution of the grant agreement. Abengoa commented that it supported the goals of the Recovery Act and made significant contributions toward those goals. Management's verbatim comments are attached.

Abengoa's response failed to demonstrate compliance with the terms and conditions of the grant for the following reasons:

- Abengoa did not provide separate invoices supporting item costs claimed as required by the Recovery Act. The documentation previously provided and included with the written response were allocations of total project costs.

- Abengoa did not provide evidence that it or its contractors competitively awarded subcontracts or obtained advanced approval of its subcontracts from the State of Illinois Project Manager. As acknowledged, it completed the work before the grant was awarded.

- Abengoa did not provide any certified payroll records to support its claim that prevailing wages were paid to laborers and mechanics. Instead, the support Abengoa provided for complying with the Act were letters from its subcontractors stating that wages paid to laborers and mechanics were equal or greater than the prevailing Davis-Bacon Act wages in their jurisdiction.

Subsequent to providing its formal response to the report, Management informed us that it had begun implementing the recommendations. With respect to Recommendation 1.2, Management stated that it had subsequently submitted payroll records to the State and based on preliminary indications, Abengoa concluded that it appeared to be in compliance with the Davis-Bacon Act. Our review of the submitted documentation, however, indicated that it did not include required certifications for all payroll records.

SECTION VI: SUB-GRANTEE'S RESPONSE (FULL TEXT)

Abengoa Bioenergy Operations, LLC
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Chesterfield, Missouri 63017
Tel (636) 728-0508
Fax (636) 728-1148

ABENGOA BIOENERGY
ABENGOA BIOENERGY OPERATIONS, LLC

October 18, 2012

Otis and Associates, PC
Attention: Ndy Otis
6875 New Hampshire Avenue, Suite 200
Takoma Park, Maryland 20912

Re: Report on Examination Level Attestation Engagement of
Abengoa Bioenergy Operations, LLC
American Recovery and Reinvestment Act – State Energy Program
Performed for the U.S. Department of Energy, Office of Inspector General
Under Contract Number: DE-IG0000018; Work Order Number: 2011-03
By Otis and Associates, PC

In re State of Illinois Department of Commerce and Economic Opportunity
Grant Award 09-466002

Ladies and Gentlemen:

Reference is made to the above-captioned report, dated as of September 28, 2012 ("Report"). Otis and Associates, PC ("Otis") has invited Abengoa Bioenergy Operations, LLC ("Company") to provide written comments on the facts presented, conclusions reached, appropriateness of the recommendations, and reasonableness of the estimated potential monetary impact or other benefits that may be realized. In that regard, the Company hereby submits this letter, together with the attachments identified below, in response to your request. Reference is also made to the State of Illinois Department of Commerce and Economic Opportunity ("DCEO") grant award 09-466002, dated as of April 26, 2010 ("Grant").

It is also important to iterate a number of key facts:

1. The Company applied as a "Large Customer" since there were and would continue to be combined annual energy costs of at least $500,000 in utility costs. As a Large Customer, the Company's energy efficiency projects were eligible for a grant of up to 30 percent of eligible project costs (up to a maximum grant award of $2 million).

2. Consequently, based on these parameters, in order for the Company to receive an award of $2 million, there had to be project costs of approximately $6.7 million. (There was no maximum limit on the total project costs.) The Company also had to have contributed a minimum of 25 percent of such costs through its own contributions or funds from other financial partners.

   As you can see from the attached letter from Abener and the enclosed supporting invoices, there were approximately $57 million in total project costs relative to the Grant.

3. The Company applied for the Grant in October 2009 and received written notice from the DCEO in November 2009 that the Company had been awarded the full amount of the grant. After several months of preparing cost analyses and working with DCEO staff on each and every aspect of the documentation, the Company and the DCEO entered into the

SECTION VI: SUB-GRANTEE'S RESPONSE (FULL TEXT) CONT.

Grant in April 2010. The DCEO was fully aware the project, for which the grant had been awarded, was completed in December 2009. Just before the grant agreement was signed, the DCEO required the inclusion of the ARRA requirements.

4. The DCEO had requested in May 2010 copies of invoices or payment receipts. The Company complied with this request, in addition to financials verifying the Company's cost basis. The Company received written notice from the DCEO in March 2012 stating: "we have determined that you are in compliance with the closing requirements of your grant agreement."

5. Importantly, the Report notes: "The lack of compliance was caused, in large part, by the fact that the State had awarded the grant to Abengoa on April 26, 2010, long after the company had completed the entire project. Abengoa started the grant-related work in February of 2009 and completed it in December 2009."

As discussed below, the Company does not agree with the findings of or the implications contained in the Report. Rather, the Company believes it is in material compliance with the terms and conditions of the Grant.

Report Statement: "Abengoa was awarded $2,000,000 under this Program, which required Abengoa to provide a matching cost of approximately $10,150,296 for the installation of energy efficiency measures into the company's new ethanol plant located in Madison, Illinois."

Company Response: As noted above, to receive an award of $2 million, there would only had to have been project costs of approximately $6.7 million, in which case the Company would have only been required to provide a cash-match of 25 percent (or approximately $1,675,000). But, in fact, the Company contributed substantially more capital expenditures and project costs were actually closer to $57 million as certified by the Company's EPC contractor (Abener).

Report Statement: "Abengoa had not complied with requirements of its grant from the State of Illinois (State) to separately identify Recovery Act costs, maximize competition, and pay prevailing wage rates to laborers."

Company Response: To the contrary, the Company has produced invoices detailing and separately identifying Recovery Act costs and paid prevailing wage rates to laborers with respect to the project. Abener has obtained letters from its subcontractors certifying wages equaled or exceeded prevailing wage rates.

Report Statement: The Company "had not separately accounted for Recovery Act costs incurred and claimed, as required under the terms and conditions of the grant."

SECTION VI: SUB-GRANTEE'S RESPONSE (FULL TEXT) CONT.

Company Response:	To the contrary, the Company has supplied documentation in the form of invoices showing appropriate cost segregation.

Report Statement:	"We noted that as of February 2010, Abengoa had claimed reimbursement for $2 million of the $12 million in costs reportedly incurred for its grant-funded project but had not discretely segregated Recovery Act costs."
Company Response:	The Company is under the understanding that adequate information had been submitted and believes that we have now provided that information; but to the extent additional information may be required by the grant, the Company requests a detailed statement of information needed and a reasonable time to submit such information.

Report Statement:	The Company "had not always solicited bids to ensure competition or obtained approval for agreements with subcontractors as required. Abengoa awarded a contract to an affiliate, Abener, a company which in turn awarded five subcontracts without soliciting bids."
Company Response:	The Company disagrees with this statement. The work was completed at the time the Grant was awarded and the DCEO knew this. The statement implies the Company intended to disregard a solicitation requirement required by the Grant. That is not true and, in fact, subcontract work was competitively bid out routinely. Nevertheless, it would be impossible for there to have been solicitation of bids like the kind ARRA purports to require giving the timing of the completion of the project and the award of the Grant. Inclusion of this statement in the Report is misleading and should be deleted.

Report Statement:	"Furthermore, Abengoa did not obtain written approval from the State's project manager prior to entering into subcontractor agreements, as required by the terms and conditions of the grant."
Company Response:	The Company disagrees with this statement. As stated above, complying with such a requirement would defy the timeline of events. Inclusion of this statement in the Report is misleading and should be deleted.

Report Statement:	"We did not include recommendations to compete its subcontracts and obtain prior approval for them because it was not plausible to meet these requirements since Abengoa had awarded the subcontracts and completed the project prior to the grant award."
Company Response:	We agree that any recommendations relative to this point would not make sense. That said, the Company believes any discussion of the Company's purported failure to compete its subcontracts is misleading and without justification, and therefore should be deleted.

SECTION VI: SUB-GRANTEE'S RESPONSE (FULL TEXT) CONT.

Report Statement:	The Company "had not provided certified payroll information to verify that wages paid to laborers complied with the Davis-Bacon Act (the Act), as contractually required." "Consequently, we were unable to determine if the rates paid to laborers and mechanics were in compliance with the Act." "However management was unable to provide any evidence to support that contention, such as a comparison of payroll information to prevailing wage rates."
Company Response:	The Company has maintained that all laborers were paid prevailing wages. The Company entered into a Project Labor Agreement (a copy of which was submitted as part of the grant application) to ensure prevailing wage rates applied for the entire facility. However, the Company is working with Abener, who is working with its subcontractors, to provide certified payroll information. Once this information is available (and we will endeavor to obtain it within 60 days), it will be promptly forwarded to the DCEO. The Company would like the Report to reflect the Company's intention to provide this information as soon as possible.
Report Statement:	"In fact, the company was allowed to claim costs incurred over a year prior to the execution of the agreement."
Company Response:	This statement implies the Company engaged in activities in violation of the ARRA. To the contrary, the Grant Agreement expressly provided that the Company was authorized to incur costs against the Grant between the dates of February 17, 2009 and December 31, 2011. As such, it was entirely permissible for the Company to claim costs incurred over a year prior to the execution of the Grant.
Report Statement:	"Consequently, officials were reportedly not aware of Recovery Act requirements at the time they incurred the costs."
Company Response:	This statement is misleading. At the time the Company engaged in the project and incurred the costs, the Company was not subject to the ARRA and its requirements.
Report Statement:	"Abengoa officials faulted their subcontractor for awarding subcontracts without competition."
Company Response:	This statement should be deleted as it is irrelevant as discussed above.
Report Statement:	"As a result of the condition noted above, Abengoa was unable to adequately support costs claimed and charged to the grant totaling $2 million, undermining the praiseworthy goals that recipients of Recovery Act

SECTION VI: SUB-GRANTEE'S RESPONSE (FULL TEXT) CONT.

funds be fully accountable for funds awarded and that the expenditure of funds be transparent to the public."

Company Response: The Company not only supports the goals of the ARRA but actually made significant contributions toward those goals. The Company stimulated the creation and increased the retention of jobs; the equipment purchased and deployed as result of the Grant saves energy; by building the 88-million gallon per year ethanol facility the Company substantially increased energy generation from renewable sources; and the ethanol, as a cleaner burning fuel than petroleum, reduces greenhouse gas (GHG) emissions. The Company believes it has complied with the terms and conditions of the Grant Agreement and, equally, important with the praiseworthy goals of the ARRA.

Report Statement: "Further, Abengoa's failure to ensure adequate competition and compliance with Davis Bacon prevailing wage rates increased the risk that costs were not reasonable and that contractors and subcontractors' employees were underpaid."

Company Response: This is misleading. The Company has received assurances from subcontractors that wages equaled or exceeded prevailing wage rates at the time.

Report Statement: "Consequently, we question $2 million in costs claimed."

Company Response: This is false. Otis has reviewed all the documents previously submitted, viewed the facility (and the subject equipment) in Madison, Illinois, and, together with this letter and the supporting information, should not have any doubt $2 million in costs were appropriately and legitimately claimed.

The Company respectfully requests that Otis reconsiders and revises its draft Report by taking into consideration the Company's responses and the additional information provided.

Sincerely,

Salvador Martos Barrionuevo
Executive Vice President

Attachments

SECTION VI: SUB-GRANTEE'S RESPONSE (FULL TEXT) CONT.

Abengoa Bioenergy Operations, LLC
16150 Main Circle Drive, Suite 300
Chesterfield, Missouri 63017
Tel (636) 728-0508

ABENGOA BIOENERGY
ABENGOA BIOENERGY OPERATIONS, LLC

February 1, 2013

Otis and Associates, PC
Attention: Ndy Otis
6875 New Hampshire Avenue, Suite 200
Takoma Park, Maryland 20912

Re: Draft Report on Examination Level Attestation Engagement of
Abengoa Bioenergy Operations, LLC (the "Company")
American Recovery & Reinvestment Act ("Recovery Act") – State Energy Program ("SEP")
Performed for the U.S. Department of Energy, Office of Inspector General
Under Contract Number: DE-IG0000018; Work Order Number: 2011-03

In re: State of Illinois Department of Commerce & Economic Opportunity Grant
Award No. 09-466002 (the "Grant")

Dear Mr. Otis:

We are in receipt of your most recent Draft Report on Examination of Level Attestation Engagement of the Company from December 2012 ("December Draft") performed on behalf of the U.S. Department of Energy's Inspector General ("DOE IG"). We respectfully ask that you add this letter (together with the photo attachments) as an additional Company response to Section VI of the Final Report.

We are grateful for receiving the Grant and putting the funds toward energy-efficiency equipment and materials at our Madison, Illinois facility. As we have previously cited, the Company documented approximately $57 million in total project costs relative to the Grant. For you and others who did not get the benefit of touring the plant, I enclose some photos of the various energy-efficiency equipment and materials – the boiler and economizers, waste-heat recovery system, and insulation.

We are also pleased you have concluded the Company complied in all material respects with the Recovery Act requirements and guidelines for the SEP. We respectfully ask that your Final Report characterize the two recommendations – (1) documentation to support the reasonableness of costs claimed, and (2) payroll records for all contractor and subcontractors personnel charged to the Grant for the State to review and ensure compliance with Davis-Bacon Act – as items the Company is working on. With respect to the payroll records, which were submitted to the DCEO and are enclosed, based on preliminary indications from the consultant, we appear to be in compliance.

The Company places the utmost emphasis on cooperation with the U.S. government, and operating in full compliance with all federal and state laws, regulations, and grant conditions. We have taken extraordinary measures to comply—to the best of our ability with your requests—and will continue to be responsive to any further action related to this audit.

Sincerely,

Salvador Martos Barrionuevo
Executive Vice President

cc: William Lubecke, DOE OIG [William.Lubecke@ch.doe.gov]
Sara Wilcockson, State of Illinois Energy Office [sara.wilcockson@illinois.gov]

Attachments
Sent via email

MANAGEMENT COMMENTS

Department of Energy
Washington, DC 20585

April 5, 2013

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

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

SUBJECT: Response to Office of Inspector General Draft Inspection Audit Report on "The Department of Energy's State Energy Program Funded under the American Recovery and Reinvestment Act for the State of Illinois"

The Office of Energy Efficiency and Renewable Energy (EERE) appreciates the opportunity to review and make comments related to the Office of Inspector General's (OIG) March 2013 Draft Inspection Audit Report for Illinois Department of Commerce and Economic Opportunity (DCEO) State Energy Program (SEP).

EERE provides guidance and support to all grantees pursuant to Code of Federal Regulations (CFR), 10 CFR 600 and 2 CFR 225 (A-87). Also when applicable, EERE will provide grantees with guidance pursuant to 2 CFR 220 (A-21), 2 CFR 230 (A-122), and 10 CFR 420. EERE seeks to ensure compliance with Federal regulations through ongoing monitoring and communications with grantees.

Although the audit firm noted that except for the weaknesses described in the reports, each of the sub-grantees complied in all material respects with the requirements and guidelines relative to SEP.. The OIG made three recommendations for Department of Energy's oversight of the Illinois SEP. EERE continues to address the OIG's recommendations and has been working with the Illinois DCEO for the past year to ensure that all corrective actions are implemented. The responses below address the OIG findings:

OIG Recommendation 1: Require Illinois to improve administration of SEP funds by ensuring its sub-grantees implement the recommendations outlined in the attached examination reports.

EERE Response:

EERE concurs with the OIG recommendation for all four of the sub-recipients to improve administration of their grant as identified in the IG auditors report on pages 17, 28, and 40. The EERE Project Officer continues to engage with DCEO to ensure that each sub-recipient corrects the issues identified in this audit.

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MANAGEMENT COMMENTS (continued)

Illinois DCEO instructed their sub-recipients to ensure that:

- Final inspections were conducted,
- Costs were tracked separately and appropriate documentation was included in the project files,
- Cost match was documented for individual projects,
- Procedures used to maximize competition were documented, and
- Required certified payrolls were provided.

Actions taken by each sub-recipient include:

- AIEC conducted verification of a sample of 269 of its total projects, and 100 percent compliance of this sample was verified.
- Bley established separate accounts to track their future project activities and placed controls in place to ensure no Recovery funds would be co-mingled. Procurement procedures were implemented to ensure that in the future they will submit documentation identifying their procurement methods and evaluating factors on bids.
- Funk Linko implemented a policy for maintaining full documentation of match expenditures and a quarterly review of the documents. Funk Linko also implemented policy of maintaining full documentation of competitive bids and quarterly reviews.
- Abengoa provided additional cost details and payroll records that contained the certifications the OIG report identified as missing in the initial submission.

OIG Recommendation 2: Examine Illinois' use of Recovery Act funding of pre-award costs and completed projects and recover amounts not meeting the intent of the Recovery Act.

EERE Response: EERE concurs with the OIG recommendation as identified on pages 2-3 of the audit report. Abengoa began negotiations with DCEO while their project was being installed. While the project was completed prior to the execution of the sub-grant agreement in April 2010, the costs were incurred during the allowable timeframe for the grant. The new ethanol plant is operational and providing efficient production of ethanol, which addresses the intent in the legislation to reduce our dependence on foreign oil. In addition, EERE has reviewed Abengoa's grant agreement, final financial status report, final program status report, and overall grant summary spreadsheet. DCEO has sent EERE all the individual invoices for the Abengoa project. EERE is completing a thorough review of the invoices to ensure that the terms and intent of the grant agreement were met.

Regarding the audit concern that other projects appeared to have been completed prior to the award of the sub-grants, EERE has been assured by DCEO that all other projects were consistent with the intent of the Recovery Act legislation and that the costs were incurred within the Recovery Act timeframe.

OIG Recommendation 3: Resolve questioned costs of about $2 million related to the Abengoa sub-grant.

EERE Response: EERE concurs with the OIG recommendation as identified on pages 2-3 of the audit report and the following actions have been completed or are planned to resolve the matter:

MANAGEMENT COMMENTS (continued)

- DCEO is in receipt of the Davis Bacon records from Abengoa and is in the process of reviewing them to ensure compliance.
- Abengoa has provided all equipment invoices to DCEO. DCEO has conducted a review to ensure the $2 million in equipment costs are eligible. The EERE Project Officer conducted desk monitoring to review these invoices for accuracy and completeness in March and April 2013. Based upon the Project Officer's review, it appears that all submitted costs were reasonable and applicable.

MANAGEMENT COMMENTS (continued)

Illinois
Department of Commerce
& Economic Opportunity
Pat Quinn, Governor

March 11, 2013

Mr. Rickey R. Hass, Deputy Inspector General for Audits and Inspections
Office of Inspector General
U.S. Department of Energy
Washington, DC 20585

RE: Examination Report on "The Department of Energy's American Recovery and Reinvestment Act – Illinois State Energy Program"

Dear Mr. Hass:

Please accept this letter in response to the above-referenced Examination Report for the Illinois State Energy Program (SEP) under the American Recovery and Reinvestment Act (ARRA). The Illinois SEP ARRA funds provided DCEO with a unique opportunity to develop new programs and expand existing programs to fund cost effective energy projects, to create and retain Illinois jobs, reduce energy consumption (and costs), increase renewable energy capacity, reduce greenhouse gas emissions, and leverage private funds.

DCEO is dedicated to the implementation of accountability and transparency measures for all of our grant programs, including all programs offered under the SEP ARRA award. Processes for monitoring compliance with grant terms and conditions are in place and DCEO continues to work with our SEP ARRA sub-grantees throughout the award closeout process to ensure compliance with both ARRA requirements and DCEO-specific terms and conditions.

DCEO has reviewed the findings outlined for the Illinois sub-grantees and concur with the weaknesses identified in the Examination Report. We are also in agreement that each of the sub-grantees have sufficiently addressed the weaknesses identified in the Examination Report and have, where applicable, successfully implemented the recommendations.

As stated in our response to DOE on the Coordination Draft, prior to issuing any sub-grants under the SEP ARRA program, DCEO determined that ARRA funding could legitimately be awarded for shovel ready projects that started after the ARRA law was enacted. Abengoa's project fits into this timeframe. The majority of sub-grants funded under the Illinois SEP ARRA program underwent several DOE reviews. Once DOE approved the grant recommendations, which included the Abengoa project, Illinois proceeded to execute Abengoa's grant.

Abengoa is diligently working with DCEO staff to provide the requested additional documentation to demonstrate compliance with the Davis Bacon requirements and to verify that all identified costs were reasonable and met the requirements of both the DCEO grant award and all ARRA requirements. The DCEO contractor hired to review all certified payroll records for Illinois SEP sub-grantees has indicated that preliminary

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MANAGEMENT COMMENTS (continued)

data for Abengoa is in compliance with the appropriate Davis Bacon prevailing wage rates for their project county. DCEO does not anticipate any issues with prevailing wage and will continue to monitor the certified payroll data and reports to ensure compliance.

We respect the completeness of the sub-grantee review process and will continue to work with each of our sub-grantees throughout the DCEO closeout process to ensure compliance with all ARRA requirements and will coordinate any additional information with our DOE Project Officer and the Office of the Inspector General, as appropriate. We appreciate the opportunity to provide this response to the DOE Draft Examination Report.

Should you have additional questions in the mean time, please feel free to contact me directly at 217/524-0933 or Sara Wilcockson of my staff at 217/785-3986.

Sincerely,

Agnes Mrozowski

Agnes Mrozowski, Acting Deputy Director
Illinois Energy Office

CC: Adam Pollet, Director, DCEO
Scott Harry, Office of Accountability, DCEO
William R. Lubecke, Office of Inspector General, DOE
Sharon Gill, SEP Project Officer, DOE

IG Report No. OAS-RA-13-19

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5. Please include your name and telephone number so that we may contact you should we have any questions about your comments.

Name _____ Date _____

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