




United States Environmental Protection Agency  
Regional Administrator  
Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

**MEMORANDUM**

**DATE:** May 7, 2015

**SUBJECT:** Response to Final Recovery Act Audit Report: Cooperative Agreement  
No. 2A-00E85701 Awarded to the Greater Lansing Area Clean Cities Coalition

**FROM:** Susan Hedman   
Regional Administrator, Region 5

**TO:** Robert Adachi  
Director of Forensic Audits  
Office of Inspector General

Thank you for the opportunity to review the final report entitled "*Audit of American Recovery and Reinvestment Act Cooperative Agreement No. 2A-00E85701 Awarded to the Greater Lansing Area Clean Cities (GLACC)*," which was prepared for the Office of Inspector General (OIG) by an independent public accounting firm. In a memo dated January 9, 2014, the OIG accepted the auditor's conclusions and recommendations that: (1) Region 5 should seek recovery of all funds (\$805,759) awarded to GLACC due to conflict of issues; and (2) Region 5 should verify the adequacy of GLACC's accounting system to provide accurate and complete disclosure of financial results for federally sponsored programs.

Region 5 does not concur with the OIG's findings and recommendations. As explained in the attached memorandum:

- (1) There is no legal or factual basis for the finding that GLACC violated EPA conflict of interest regulations; and
- (2) GLACC's accounting system was adequate and met applicable grant requirements.

Accordingly, Region 5 will not seek recovery of \$805,759 from GLACC. EPA awarded funding so that GLACC would be able to retrofit school buses to reduce diesel air emissions and purchase four hybrid buses. The funds were successfully expended to meet these purposes.

If you have any questions regarding our response, please contact Robert Kaplan by telephone at 312-886-1499 or by e-mail at [kaplan.robert@epa.gov](mailto:kaplan.robert@epa.gov).

cc: George Czerniak, ARD  
John Mooney, ARD  
Diane Nelson, ARD  
Sharleen Phillips, ARD  
Pamela Blakley, ARD  
Eric Levy, RMD  
Dale Meyer, RMD  
Fran Ramos, RMD  
Andre Daugavietis, ORC  
Sandra Lee, ORC  
Eric Cohen, ORC  
Jan Lister, OIG  
Ollie Green & Company



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

**MEMORANDUM**

**DATE:** May 6, 2014

**SUBJECT:** Report and Recommendation on Greater Lansing Area Clean Cities Grant Audit

**FROM:** George Czerniak  
Director, Air and Radiation Division

Robert A. Kaplan  
Regional Counsel

**TO:** Susan Hedman  
Regional Administrator

**I. Summary**

In a memorandum dated January 9, 2014, the Office of Inspector General accepted the conclusions and recommendations of its contracted independent public accounting (IPA) firm Ollie Green & Company regarding a grant EPA awarded to the Greater Lansing Area Clean Cities coalition (GLACC) in 2009. The findings of the IPA are contained in the report entitled *Audit of American Recovery and Reinvestment Act Cooperative Agreement No. 2A-00E85701 Awarded to the Greater Lansing Area Clean Cities (GLACC), Report No. 14-R-0088*, dated November 20, 2013 (audit report).<sup>1</sup> GLACC is a nonprofit organization whose principal purpose is the promotion of clean transportation and air quality. The OIG concluded that (1) Region 5 should recover from GLACC all of the funds provided under the grant (\$805,759) because of two conflicts of interest, and (2) GLACC's accounting system was not adequate to provide accurate and complete disclosure of financial results for each federally sponsored program.<sup>2</sup>

<sup>1</sup> In the January 9, 2014 memorandum, the OIG explained that:

The IPA is responsible for the audit report and the conclusions expressed in that report. The OIG performed the procedures necessary to obtain a reasonable assurance about the IPA's independence, qualifications, technical approach and audit results. Having done so, the OIG accepts the IPA's conclusions and recommendations. . . . The recommendations represent the opinion of the IPA and the OIG. . . .

Accordingly, unless required to ensure clarity, when referring to the findings, conclusions, recommendations and other information contained in the final audit report, this memorandum will attribute them to the OIG.

<sup>2</sup>The IPA's draft audit report included the recommendation that EPA recover costs related to the retrofitting of

In Region 5's August 28, 2013 response to the IPA's draft audit report, we identified extensive factual and analytical gaps in that draft report. Unfortunately, the final report included no additional factual support or analysis for its conclusions. Consequently, ARD and ORC staff conducted an independent investigation regarding the alleged conflicts of interest and GLACC's accounting system. We have reviewed the audit report, GLACC's responses to the draft and final audit reports, materials in our files, and further information from GLACC regarding its administration of the grant. We find no basis in law or fact for either of the OIG's two recommendations. We recommend, therefore, that you not accept the OIG's conclusions and opinions, and not require GLACC to return any of the grant funds.

#### **A. Background of GLACC, KBS and Dean Transportation**

The U.S. Department of Energy first designated the Greater Lansing area as a Clean Cities Coalition in 2003. DOE's Clean Cities Program is designed to promote locally based government and industry partnerships that work to build sustainable alternative fuels markets. Since 2007, GLACC has contracted with Kuntzsch Business Services (KBS) to provide administrative services to the coalition. KBS works in both the for-profit and nonprofit sectors, and offers nonprofit organizations a variety of grant support services.

GLACC submitted its proposal for an American Recovery and Reinvestment Act (ARRA) grant to EPA in April, 2009. EPA awarded GLACC the ARRA grant on July 21, 2009. GLACC paid KBS approximately \$15,300 to assist in the administration and management of this ARRA grant. As provided in its grant proposal, GLACC subsequently funded projects performed by two entities: Dean Transportation and Grand Ledge Public Schools.<sup>3</sup>

Dean Transportation is the service provider for preschool, elementary and middle school regular education transportation, and special education transportation for all grades in the Grand Rapids, Michigan school system. Dean Transportation used the funds provided by GLACC to purchase retrofit equipment to reduce tailpipe emissions for 364 buses in its school bus fleet, and to purchase four new hybrid school buses. At the time of the grant, about eighty-five percent (85%) of the retrofitted school buses were used to transport special needs students. Some of these students suffered from asthmatic conditions or respiratory issues and were especially susceptible to tailpipe emissions.

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school buses that were salvaged after the retrofits were installed but before the expected 3-5 year period of bus operation contemplated by the grant. The final audit report accepted by the OIG does not include this recommendation. In order to completely address the potential conflicts of interest issue raised by the audit report, this memo includes a short discussion of why and to what extent buses retrofitted with GLACC grant monies were salvaged.

<sup>3</sup>The audit report made no specific findings or recommendations with regard to the funds awarded to the Grand Ledge Public Schools.

Dean Transportation paid vendors to provide the new equipment and submitted the paid invoices to GLACC. After GLACC determined that an invoice was for expenses allowed under the grant, GLACC then reimbursed Dean Transportation for the exact amount of the payments made to the vendor. Dean Transportation paid all costs associated with the installation and maintenance of the new equipment. GLACC did not reimburse Dean Transportation for any administrative or implementation costs associated with the project. Although the bus retrofits reduced tailpipe emissions, the retrofitted buses were actually more expensive to operate and maintain after the retrofits, and the emission improvement did not increase the market value of the buses.

## **B. Conflicts of Interest**

The OIG identified two conflicts of interest at GLACC during the period of the grant, and recommended that EPA recover \$805,759 in costs (i.e., the full grant amount) as a result of these conflicts of interest. The two relationships that the OIG concluded gave rise to conflicts of interest were (1) Patrick Dean's service on GLACC's Board of Directors, and (2) Rachel Kuntzsch's service as the Executive Director of GLACC.

### **1. EPA Conflict of Interest regulations**

EPA's grant code of conduct regulations include conflict of interest provisions that prohibit an employee, officer or agent of a grantee from participating in the selection, award or administration of a contract supported by federal funds, if a real or apparent conflict of interest would be involved. These regulations define when such a conflict arises:

Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.

40 C.F.R. § 30.42. The regulations allow grant recipients to set standards for situations in which the financial interest is not substantial. *Id.*

These standards and EPA's administrative case law interpreting them set forth a two-step test for disallowance of costs due to conflict of interest: first, whether a conflict of interest exists; and second, to what extent the employee, officer, or agent participated in the award or administration of the grant.<sup>4</sup> If there is both a conflict and participation, then the costs affected by the conflict should be disallowed.<sup>5</sup>

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<sup>4</sup> Regional Administrator's decision in the appeal of Village of Sauget, Illinois, Docket Number 0599-AD08, September 20, 2002.

<sup>5</sup> See, e.g., *In the matter of Norwood, Missouri*, EPA Docket No. 07-88-AD06 (03/29/89), where "the grantee's certifying representative, the former mayor, was also receiving compensation from the contractor."

## 2. Patrick Dean

Patrick Dean was elected to GLACC's Board of Directors on June 14, 2010, primarily to help raise funds for the coalition. Mr. Dean did not attend a Board meeting or conduct any Board business until January 11, 2011. Mr. Dean was Development Director for Dean Transportation when the company received reimbursements under the GLACC grant. Patrick Dean's father, Kellie Dean, was then the owner of Dean Transportation. GLACC recruited the younger Dean to become a member of its Board due to his extensive knowledge of the school busing industry and green fleet issues and, according to the current President of GLACC, because of his well-known interest in reducing environmental impacts from school buses.

Patrick Dean and/or his family member, Kellie Dean, clearly had a financial or other interest in Dean Transportation. According to EPA regulations, therefore, a real or apparent conflict of interest arose when Patrick Dean joined GLACC's Board of Directors.

At this point, the audit's inquiry should have turned to whether Patrick Dean "participate[d] in the selection, award or administration" of the GLACC grant. 40 C.F.R. § 30.42. The audit report failed entirely to address this critical inquiry.<sup>6</sup> The OIG failed to identify a single grant transaction that was or could have been influenced or affected by the alleged conflict. ARD and ORC's own investigation failed to uncover any evidence whatsoever that as a member of the Board, Mr. Dean participated in the selection, award or administration of the GLACC grant.

EPA awarded GLACC the ARRA grant almost one year before Mr. Dean became a member of the Board of Directors. The bidding process for the retrofit equipment and hybrid buses under the grant had been completed by January 21, 2010. GLACC administered the grant by having KBS review subrecipient reports and requests for reimbursement, and compare them to the work plan. After KBS determined whether the submitted costs were allowable under the approved grant plan, GLACC would submit a request to EPA for reimbursement. The reimbursement process did not require Board action or Board member involvement at any step of the process. Mr. Dean has stated that, except for hearing a brief update on the status of the grant, he did not conduct any business whatsoever regarding the ARRA grant. The current President of GLACC confirmed that the Board conducted no business regarding the grant at any meeting attended by Mr. Dean.

EPA evaluated each GLACC reimbursement request. Region 5 actively monitored the GLACC grant, which included sending staff to Michigan to directly inspect the work. The EPA Project

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<sup>6</sup>The audit report appears to deal with this question with the summary statement: "Our audit found no written internal controls or firewalls designed to mitigate the impact of the aforementioned conflicts. As a result, we could not determine whether procurement decisions made by GLACC were influenced by the subrecipient/Board Member . . ." Audit report, p. 4. The record clearly reflects that GLACC did have written internal controls to address potential conflicts of interest. Perhaps more importantly, there is no connection between GLACC's internal controls and the ability of OIG's independent contractor to investigate whether procurement decisions were influenced by Mr. Dean.

Officer and technical contact found that the bus retrofits were correctly completed. (The hybrid buses had not arrived as of the time of EPA's inspection, but were due to arrive in June, 2010, around the time Mr. Dean was appointed to GLACC's Board.) Region 5 determined that the funds were appropriately expended on purchasing the bus retrofits and hybrid buses that were the purpose of the grant.

The GLACC Board was aware of Patrick Dean's relationship to Dean Transportation. The Board discussed the relationship and advised Mr. Dean on how to avoid any potential conflict of interest. GLACC had in place a written conflict of interest policy, and GLACC has asserted that the policy was followed.

We conclude that Mr. Dean had no opportunity to influence when, whether or how GLACC's grant funds were administered. Although Mr. Dean was on the Board of GLACC during the grant period, he did not participate in grant decisions. In fact, almost all grant funds had been spent and almost all work completed by the time Mr. Dean became an active member of the Board. GLACC's conflict of interest policy prohibited participation by a GLACC representative on any matter in which he or she may have a pecuniary or other interest. GLACC and Mr. Dean adhered to the policy.

In summary, we believe the OIG (or, more specifically, its IPA) erred in failing to investigate whether Mr. Dean participated in the selection, award or administration of the GLACC grant, and such an investigation would have led to the conclusion that he did not. Mr. Dean's real or apparent conflict of interest, therefore, does not provide a basis for recovery of the grant funding.

### 3. Rachel Kuntzsch

The second conflict of interest identified by the OIG was that of Rachel Kuntzsch, an employee and co-owner of KBS. As stated above, KBS was hired in 2007 by GLACC for a variety of grant related services. The 2010 contract between GLACC and KBS specified that the "Executive Management" services provided by KBS included serving as GLACC's "Executive Director." The audit report concluded:

Our audit found no special measures taken by GLACC to mitigate the inherent conflicts of interest of having a contractor perform the functions of GLACC's Executive Director. These inherent risks include having responsibility for GLACC's procurements, check signatory, disbursements and other decision making responsibilities of an executive director while also serving as a contractor.

Audit report, p. 5.

Although GLACC documents referenced Ms. Kuntzsch as “Executive Director” or as “Ex-Officio Executive Director,” our investigation into the nature of Ms. Kuntzsch’s role at GLACC established that she was not the head of the GLACC organization; that function is performed by GLACC’s Board President. Ms. Kuntzsch had no substantive decision-making authority. She was a contractor hired by GLACC to perform administrative and business management tasks such as bookkeeping, invoicing and arranging stakeholder meetings. The record reflects that KBS and Ms. Kuntzsch performed only this type of work.<sup>7</sup>

## **II. GLACC’s Accounting System**

The OIG criticized GLACC’s accounting system, but did not question costs under this issue. We find that GLACC’s accounting system under the grant was sufficient. We find no support for the OIG’s determination that GLACC’s accounting system could not segregate transactions or generate cost reports by project. During the grant period, ARD was in regular direct contact with GLACC about the grant and identified all necessary information from GLACC’s reports and financial information. Regional staff was readily able to segregate transactions and cost reports by project. Region 5 verified that GLACC met the financial disclosure of information requirements pursuant to 40 C.F.R. § 30.21(b)(1) and that GLACC demonstrated an adequate accounting system for the grant.

## **III. Salvaged Buses**

Unfortunately, 77 (22%) of the 364 buses retrofitted with GLACC grant funds were taken out of service within two years, i.e., less than the three-to-five year operation expectation of the grant award. The draft audit report questioned costs related to these salvaged or otherwise out-of-service buses. This concern was not included in the audit report accepted by the OIG.

In order to allay any suspicion that Mr. Dean was or should have been aware that Dean Transportation buses were going to be taken out of service within two years after the school bus retrofits were installed, EPA conducted further investigation. The 77 buses were taken out of service for a variety of reasons, including accidents and fire, but most of the buses were salvaged due to safety violations unrelated to the retrofits. The Michigan State Police Motor Carrier Division (MCD) enforces safety requirements for school transportation vehicles. After the buses were retrofitted, the MCD issued a new inspection manual and increased the stringency of its inspections. This change in the MCD inspection manual was not and could not have been foreseen by GLACC, Dean Transportation, Patrick Dean or EPA. Moreover, we believe that the diesel retrofit program contained an implicit acceptance of the risk that the lifetime benefits of certain buses would be less than anticipated. Because newer school bus engines were already

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<sup>7</sup> Even if a conflict had been present, there is no basis for requiring GLACC to return the entire amount of its grant. KBS was paid \$15,300 under the terms of its contract with GLACC, less than 2% of the grant amount. The audit report did not allege that KBS over-billed GLACC for its services or that KBS did not perform any service required by its contract. If any return of funds were justified (which we do not believe is the case), the amount to be recovered should not exceed the maximum amount KBS was paid for its services.



emitting lower levels of pollutants, only older buses with engines manufactured between 1994 and 2003 were eligible for retrofits under the grant. The universe of eligible buses contained only buses which had already been in service for a number of years and had been subject to road salt for many Michigan winters. EPA concluded that a 78% “meet or exceed” success rate was acceptable under the ARRA grant program.

#### **IV. Conclusion**

Based on our review of the full information available in this matter, we recommend that Region 5 not support the two recommendations of the OIG. We have found that the factual record does not support either allegation of a conflict of interest. We have found that grant funds were properly allocated and administered, and that GLACC’s accounting system was adequate and met the grant requirements. The grant at issue was for the purpose of purchasing four hybrid buses and retrofitting 364 buses to reduce diesel air emissions; we have found that the grant funds were successfully expended to meet that purpose. Accordingly, we recommend that Region 5 not request recovery of the \$805,759.

Your finding in this matter to OIG is due by May 9, 2014. If you have any questions regarding the report and recommendation, please contact Andre Daugavietis of ORC at (312) 886-6663, or Diane Nelson of ARD at (312) 886-2929.

cc: Andre Daugavietis, ORC  
Diane Nelson, ARD  
Sharleen Phillips, ARD