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Vi See, Executive Director
Community Action Partnership of Lancaster and Saunders Counties
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In connection with our Federal Office of Management and Budget (OMB) Circular A-133 audit (the Single Audit) of the State of Nebraska for the fiscal year ended June 30, 2010, we performed testing of the Weatherization Assistance for Low-Income Persons program administered by the Nebraska Energy Office (the Agency). The Community Action Partnership of Lancaster and Saunders Counties (CAPLSC) is a subrecipient of the Agency.

The OMB A-133 June 2010 Compliance Supplement requires the auditor to “review the pass-through entity’s documentation of during-the-award monitoring to ascertain if the pass-through entity’s monitoring provided reasonable assurance that subrecipients used Federal awards for authorized purposes, complied with laws, regulations, and the provisions of contracts and grant agreements, and achieved performance goals. . . Verify that the effects of subrecipient noncompliance are properly reflected in the pass-through entity’s records.” In relation to these requirements, we performed testing of CAPLSC Weatherization Assistance expenditures.

We noted certain internal control or compliance matters related to the activities of the CAPLSC or other operational matters that are presented below. The comment and recommendation, which has been discussed with the appropriate members of CAPLSC and the Agency’s management, is intended to improve internal control or result in other operating efficiencies. This issue will also be reported in the State of Nebraska’s Statewide Single Audit Report Schedule of Findings and Questioned Costs.

The Agency and CAPLSC were provided the opportunity to respond to the comment and recommendation included in this letter and their formal responses have been incorporated into this letter. Responses by the Agency and CAPLSC have been objectively evaluated and recognized; however, responses that indicate corrective action has been taken were not verified at this time by the Auditor of Public Accounts (APA), but will be verified in the next Single Audit of the State.

The following is our comment and recommendation for the year ended June 30, 2010, related to the Agency and CAPLSC.

Weatherization Assistance for Low-Income Persons and Recovery Act Weatherization Assistance for Low-Income Persons

The Community Action Partnership of Lancaster and Saunders Counties (CAPLSC) did not separately account for Recovery Act and non-Recovery Act Weatherization funds. CAPLSC also limited competition for the replacement of furnaces and air conditioners without appropriate justification.

OMB Circular A-133 §400(d)(3) states a pass-through entity shall “Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.” Title 2 CFR 176.210(a) (January 1, 2009) states, “To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 ‘Uniform Administrative Requirements for Grants and Agreements’ and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.” Title 10 CFR 600.143 (January 1, 2009) states, “All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.” A good internal control plan requires procedures to ensure compliance with Federal requirements.

During on-site monitoring visits conducted by the Nebraska Energy Office (the Agency) Fiscal Compliance Analyst in the first half of 2010, and as we noted in testing, CAPLSC did not account for Recovery Act funds separately on its accounting system. CAPSLC was awarded \$4,531,004 in Recovery Act funds and had received \$646,613 through June 30, 2010. The Agency is currently working with the subrecipient to ensure Recovery Act funds are accounted for separately.

CAPLSC awards 12 to 18 month contracts to heating, ventilation, and air conditioning (HVAC) contractors for inspection and tune-up services for Weatherization Assistance for Low-Income Persons (the Program). CAPLSC last requested bids for HVAC inspection and tune-up services on October 15, 2009. The request was sent to 32 different contractors. Six contractors requested bid packets, and two of the six submitted bids and were awarded contracts.

The letter indicated the CAPLSC “. . . is requesting bids on inspection, cleaning, tuning services and minor repairs for heating and cooling systems.”

The letter did not indicate that only those vendors submitting bids and receiving service contracts would be considered for bidding on sales and installation of replacement units for Program projects by CAPLSC. The limiting of bidding for replacement units to the only two contractors to submit bids for inspection and other minor services is a limitation of competition as prohibited by Title 10 CFR 600.143.

Based on the on-site monitoring conducted and other concerns noted by the Agency, we performed testing of 60 contractual payments of CAPLSC, 33 of the payments tested were for heating and air conditioning replacements. We noted the following:

- Two replacements tested did not have bids by both contractors documented. Questioned costs noted were \$3,951 and \$1,467.
- One replacement was billed in excess of the estimate by \$702.
- One replacement was overpaid by CAPLSC by \$5.
- One replacement was bid on by only one bidder, questioned costs of \$186.

The following table represents CAPLSC payments to HVAC contractors for the fiscal year ended June 30, 2010:

Vendor	Inspection & Minor Services	Replacement	Total	% of Total CAPLSC Expenditures
Reinick Heating & Air	\$ 18,677	\$ 1,000,690	\$ 1,091,367	44.83%
Cool Concepts	\$ 8,580	\$ 286,905	\$ 295,485	12.14%

Total Federal expenditures by CAPLSC for the Program were \$2,434,480 for the fiscal year. Reinick Heating & Air and Cool Concepts were the top two vendor recipients of Program Federal funds administered by CAPLSC.

Additionally, we noted the CAPLSC Weatherization Program Administrator and the owner of Reinick Heating and Air were neighbors, both residing on the same block of North 23rd Street. Title 10 CFR 600.142 (January 1, 2009) states, “No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. 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.” While the relationship between the two parties noted does not fit the definition of the CFR, the relationship does have the appearance of being less than arm’s length.

There is an increased risk Federal awards will not be used for authorized purposes in accordance with Federal requirements. There is also an appearance of conflict of interest when the largest vendor is a neighbor of the Program Administrator and competition has been unreasonably limited.

We recommend the Agency implement procedures to ensure subrecipients are adequately monitored to ensure Federal awards are used for authorized purposes in accordance with State and Federal requirements. Due to the increased dollars and requirements for ARRA funds, the Agency may need to consider increasing the number of on-site visits performed or other procedures as necessary to resolve the issues noted. We also recommend the Agency take immediate action to ensure CAPLSC implements procedures to ensure open and free competition in the replacement of furnaces and air conditioners.

CAPLSC Response: *Relating to concern that expenditures and obligations were not separately accounted for:*

This relates specifically to a concern that CAPLSC did not segregate expenditures and obligations relating to Recovery Act and non-Recovery Act Weatherization work completed. This concern was shared on April 2 during the program audit exit interview conducted by NEO. On April 19, CAPLSC staff delivered to the NEO offices a detailed narrative of corrective actions taken along with support documentation detailing transactions. On this date, NEO presented the formal written program audit report to CAPLSC and requested that the response to the audit be reformatted based on this written report. The revised narrative and documentation was delivered to NEO on April 22nd. NEO indicated that they planned to utilize an independent auditor to audit the corrective actions. This has not occurred to date. During a September 27 meeting, NEO shared with CAPLSC that on July 13, they were notified by the State Auditor's office to relinquish plans to hire an independent auditor for CAPLSC pending their work. While on site at CAPLSC, the State Auditors staff did not complete the audit of this concern albeit noting their knowledge of the concern in the management report.

APA Response: **The purpose of our procedures was not to audit the corrective actions, but to verify subrecipient noncompliance during the fiscal year. We suggested NEO delay the work of the independent auditor they hired to avoid any duplication of efforts.**

Agency Response: The Agency concurs with this statement and the supporting information delineated in the management letter. The Agency discovered the commingling of Recovery Act funds and non-recovery funds in a formal monitoring visit to CAPLSC on March 29-April 2, 2010, and subsequently notified CAPLSC of this finding in correspondence dated April 14, 2010 under the signature of former agency director Neil Moseman;

“The most serious finding involved the pooling of U.S. Department of Energy annual formula WAP funds and the 2009 American Recovery and Reinvestment Act (ARRA) WAP funds. ARRA requires that all costs be properly identified prior to any reimbursement of funds and shall not be commingled or pooled under any circumstance related to the weatherization of housing units and/or the administration of a Weatherization Assistance Program. Community Action Partnership of Lancaster and Saunders Counties (CAPLSC) staff attended Energy Office meetings at which this requirement was communicated explicitly by Energy Office staff.”

As a result, the Energy Office flagged CAPLSC as a high-risk agency until the CAPLSC was determined to be in compliance. In correspondence dated April 19, 2010 CAPLSC director Vi See states,

“The general ledger account in question (#7030 Weatherization) has been eliminated and all obligations and expenditures related to our sources of funding have been segregated to the individual program codes of: 7010 – DOE; 7015 – LES Weatherization grant; 7020 – LIHEAP; and 7025 – DOE ARRA. All costs related to ARRA Weatherization projects are tracked and accounted for separately and our internal accounting practice now reflects this.”

The Energy Office subsequently issued a Request for Proposals and entered into an agreement with an independent auditor, Lutz and Company, to verify that the appropriate accounting procedures were put into place and to address other findings identified in the Energy Office’s Formal Monitoring Report. The work was scheduled to commence in early July. However, as part of the entrance conference for the Single Audit, Auditor Foley was apprised of the intention of the Energy Office to contract with Lutz and Co. and the Auditor asked current Director Ginger Willson to postpone activities pending the completion of the Single Audit by his office. Upon completion of the Single Audit, the Energy Office entered into a agreement with the Auditor’s Office to complete this review using Agreed Upon Procedures with work to commence in October 2010. A determination as to whether CAPLSC should continue to be flagged as a high-risk agency will be based on the outcome of this work.

CAPLSC Response: *Relating to the summary of CAPLSC request for HVAC contractors: The management letter summarizes actions taken in October of 2009. In addition, CAPLSC staff met with Nebraska Energy Office (NEO) staff on May 19 to discuss the HVAC procurement process for purposes of improving the process and increasing the number of contractors, CAPLSC implemented suggestions provided by NEO staff. In July, ads were placed in the legal notice section of the Lincoln Journal Star and in the Hickman, Waverly, Wahoo and Ashland newspapers. Twenty-two announcement letters were directly mailed to HVAC contractors in Lancaster and Saunders Counties and surrounding areas. Eleven bid packets were mailed to bidders expressing interest.*

Two completed bid packets were received. Follow-up calls were initiated to those who did not respond.

During the May 19 meeting, NEO staff indicated that they would share the names of HVAC contractors who had expressed interest in the Weatherization Assistance Program. This did not occur.

On July 14, I received an email from NEO staff indicating that they had additional input relating to the bid package and process and that it would be forwarded by the end of the week. This did not occur.

CAPLSC Corrective Action Plan: *As suggested by the Nebraska Auditor of Public Accounts staff completing the audit, CAPLSC will immediately incorporate within its HVAC bid notice and any promotion of the opportunity to bid HVAC services the following clause:*

“Only contractors awarded servicing contracts for HVAC systems will be afforded the opportunity to bid on major repair and replacement of HVAC systems.”

If this effort does not produce additional interest on the part of HVAC contractors, CAPLSC will seek assistance from NEO to further revise its HVAC procurement process.

APA Response: The inclusion of the clause is the minimum effort that should be taken. The bid process should be opened immediately and as noted by CAPLSC, if additional contractors do not respond, further revisions should be discussed with the Agency.

Agency Response: The Energy Office concurs with the Auditor's observation that the manner in which CAPLSC has previously solicited for services of heating, ventilation, and air conditioning (HVAC) contractors limits bidding of replacement units solely to contractors who submit successful bids for inspection and other minor services. In an email to the Energy Office dated September 29, 2010, CAPLSC indicates,

"As suggested by the Nebraska Auditor of Public Accounts staff completing the audit, CAPLSC will immediately incorporate within its HVAC bid notice and any promotion of the opportunity to bid HVAC services the following clause: 'Only contractors awarded servicing contracts for HVAC systems will be afforded the opportunity to bid on major repair and replacement of HVAC systems.'"

The concern still lies with the practice of limiting the opportunity to bid on HVAC replacement and major repair to only those contractors who were awarded bids for inspections and minor service. The Energy Office intends to direct CAPLSC to re-open the bidding process with additional measures intended to engage additional contractors in weatherization-related HVAC replacement, servicing and repair work.

CAPLSC Response: *Relating to file reviews:*

- 1. Files 2009-201 L and 2010-035 L "did not have bids by both contractors". Two bids were originally received. Duplicate copy of the second bid has been obtained, labeled as duplicate and placed in the file. The presence of the second bid confirms that the project was awarded to the low bidder.*
- 2. File 2009-222 L "replacement was billed in excess of estimate by \$702". Two bids were originally received. Bid was awarded to the low bidder. It was discovered that incorrect equipment was bid by the low bidder. With the increase of \$702 to accommodate the bid specifications it remained the low bid.*
- 3. File 2009-299 L "was overpaid by CAPLSC by \$5". Community Action did misread this billing statement which created an overpayment to the contractor for \$5.00 and an overbilling to Dept. of Energy for the same \$5.00. This will be corrected in a manner directed by NEO.*
- 4. File 2009-039 L "replacement was bid on by only one bidder, questioned costs of \$186". The original work in this home was bid and awarded to the low bidder. The questioned cost of \$186 was an additional action identified during the quality control inspection and because of the minor cost and timeline for completion the work was assigned to a contractor with availability.*

APA Response: Documentation was not available during fieldwork.

CAPLSC Response: *Relating to the proximity of the home addresses of the Weatherization Program Administrator and the HVAC Contractor:*

As noted within the management letter, the fact that these two parties live in close proximity in the same neighborhood in Lincoln does not fit the definition of Title 10 CFR 600.142 nor does it meet the definition of a conflict of interest as defined by the fiscal policies of CAPLSC.

During the Informal Exit Interview on August 4, the representative from the State Auditor's office said that he found no instances where Reinick Heating & Air was selected for a project when they were not the lowest bidder. In addition, he stated that he found the bids between the two HVAC contractors to be competitive. When asked directly, if living in the same block would be appearance enough of a conflict of interest to not do business with an individual or company, I was told that the file review did not support a concern.

Reinick Heating & Air became a Weatherization Program contractor in 2002. NEO staff has been aware of the residential addresses of the two parties during this entire period of time and have not previously expressed concern.

APA Response: **Although living in the same block in itself would not give reason to not do business with an individual, coupled with the limitation of competition does raise questions. The 33 payments tested did not have exceptions to the lowest bidder being selected, however, only two bidders were used and the appearance of the largest vendor from a Program participating in limited opportunity procurements with their neighbor is concerning.**

Agency Response: The Energy Office agrees with the Auditor's recommendations. Since the execution of ARRA contracts in April 2009, the Energy Office has completed a 5-day formal monitoring visit at each of the nine subgrantee organizations in the state. An additional visit by an independent auditing firm to conduct a review of Agreed Upon Procedures was completed at one subgrantee and is being currently conducted by the Auditor's Office at CAPLSC. It is the intent of the Energy Office to conduct similar reviews of the remaining seven subgrantees. The Energy Office's second round of Formal Monitoring visits will begin in early 2011 as well. Additionally, Energy Office Weatherization Program Monitors inspect 30 percent of the units that are weatherized. These reviews include on-site inspections as well as file reviews including Davis-Bacon compliance.

The corrective actions submitted by CAPLSC to the Energy Office do not sufficiently address the need to ensure an open and fair bidding process or provide any suggested actions to address the perceived conflict of interest due to the proximity of residences between the owner of Reinick Heating and Air and the CAPLSC Weatherization Program Administrator. Further discussion between the Energy Office and CAPLSC will focus on specific recommendations to ensure an open and fair bid solicitation and award process as well as disclosure of any perceived or real conflict or interest to assure the integrity of the contracting processes.

Our audit procedures are designed primarily on a test basis and; therefore, may not bring to light all weaknesses in policies or procedures that may exist. Our objective is, however, to use our knowledge of the CAPSLC and its interaction with the Agency gained during our work to make comments and suggestions that we hope will be useful to you.

This letter is intended solely for the information and use of CAPSLC, the Agency, the Governor and State Legislature, others within the Agency, Federal awarding agencies, and management of the State of Nebraska. However, this letter is a matter of public record and its distribution is not limited.

We appreciate and thank all of the CAPSLC and Agency employees for the courtesy and cooperation extended to us during our audit.

Sincerely,

Signed Original on File

Pat Reding, CPA, CFE
Assistant Deputy Auditor

cc: J. Todd Hall, CAPLSC Board President