



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
October 12, 2010

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General, serving in the capacity as chair of the Stimulus Oversight Panel, found significant bidding irregularities by the Community Action Commission to Help the Economy, Inc. (CACHE), a Sullivan County-based community action group. CACHE had received funds from the American Recovery and Reinvestment Act of 2009 (ARRA) pursuant to a grant contract with the New York State Division of Housing and Community Renewal (DHCR). The Inspector General uncovered evidence which strongly suggests that CACHE's Director of Weatherization, Jimmy Crawley, improperly steered four contracts, including one funded by ARRA, to EVS Burner Services, a sole proprietorship based in Monticello, New York, specializing in home heating unit installation and repair.

The Inspector General has provided a copy of this report to the New York State Attorney General's Office for consideration of criminal charges. Additionally, the Inspector General recommends that DHCR provide expansive procurement training to employees of CACHE, as well as to similar not-for-profit agencies receiving state and ARRA funding. DHCR should also review its policy and procedure manual to ensure that clear, detailed guidance is provided to these agencies conducting competitive bidding.

The Inspector General also established that CACHE lacked adequate inventory controls over supplies and equipment purchased with ARRA and state funds intended for its Weatherization Assistance Program. While auditors with DHCR were well aware of these deficiencies, corrective action was minimal and inadequate to address the problems. The Inspector General, therefore, recommends that DHCR conduct training and provide agencies with proper protocols to reasonably account for weatherization-related property. Furthermore, DHCR should exercise greater oversight of agencies' inventory, and where deficiencies are identified, recoup monies for missing property and enforce stricter internal controls by withholding funds from those agencies that fail to remedy problems.

The Inspector General further discovered that CACHE failed to abide by prevailing wage requirements of ARRA by paying certain employees less than the established wage rate on ARRA-funded weatherization projects. The Inspector General

has referred this matter to the U.S. Department of Labor for its review and appropriate action.

ALLEGATION

In June 2009, the Inspector General received an allegation that CACHE Weatherization Director Jimmy Crawley steered a furnace installation contract to EVS Burner Service, a company owned by Crawley's friend, Harry Dennis.

SUMMARY OF INVESTIGATION

Background

Under the American Recovery and Reinvestment Act of 2009 (ARRA), New York State has been provided with \$32.4 billion in federal funding for infrastructure improvements, education, healthcare and alternative energy, plus much more. On July 9, 2009, Governor David A. Paterson ordered the creation of a Stimulus Oversight Panel to ensure that the over \$32 billion of federal funds provided to New York State under ARRA are utilized with transparency and accountability. The Panel is chaired by New York State Inspector General Joseph Fisch and includes state Division of Human Rights Commissioner Galen Kirkland, Metropolitan Transportation Authority Inspector General Barry Kluger and state Medicaid Inspector General James Sheehan. With the signing of Executive Order No. 31 on November 25, 2009, the Panel was formalized and provided expanded jurisdiction over state agencies receiving ARRA funds. The Executive Order charges the Panel with "the prevention and detection of waste, fraud, abuse and mismanagement of ARRA funds, the promotion of transparency and openness," and the "distribut[ion] [of ARRA funds] in an equitable, fair and non-discriminatory manner."

DHCR has been allotted \$394 million of ARRA funds, and distributes these funds through grants as a supplement to its existing Weatherization Assistance Program. This program assists income-eligible families and individuals by reducing their heating/cooling costs and improving the safety of their homes through energy efficient measures. Applications for assistance under the program are made to local service providers under contract with DHCR. Upon approval, the local service provider will conduct a comprehensive professional analysis of the applicant's home, and based on that analysis and the funds available will install or cause to have installed, weatherization measures which have been determined to be the most cost-effective in reducing the applicant's energy consumption.

Significant Bidding Irregularities at CACHE

Community Action Commission to Help the Economy, Inc. (CACHE), located in Liberty, Sullivan County, is a not-for-profit corporation whose stated mission is to "address emergency needs of households [and] individuals and promote self-based concept which focuses on empowerment through accessing resources within the family

structure and the community.” In addition to its Weatherization Assistance Program and other types of assistance it provides to residents of Sullivan County, CACHE offers programs for victims of domestic violence and a day care center. CACHE is scheduled to receive upwards of \$1.6 million in ARRA funds in addition to its annual receipt of approximately \$500,000 in regular Weatherization Assistance Program funds.

The Inspector General found significant bidding irregularities during four of CACHE’s procurements for weatherization-related goods and services. CACHE’s weatherization staff performs most of the work to improve an income-eligible person’s home heating and cooling efficiency. However, furnace installation and maintenance is typically subcontracted to a private company. DHCR requires a competitive bidding process in the award of these contracts. CACHE Weatherization Director Crawley oversees the Request for Proposals (RFP), bid opening and review, and is required to award contracts to the lowest responsible bidder.

The Inspector General uncovered evidence which strongly suggests that Crawley improperly steered four contracts to EVS Burner Services (EVS), including an ARRA-funded contract to clean and tune gas and oil furnaces. Specifically, the Inspector General found significant flaws in at least four of CACHE’s weatherization procurements overseen by Crawley – each one resulting in Crawley awarding the contract to EVS.

EVS is a sole proprietorship owned and operated by Harry Dennis III, out of his residence in Monticello. When interviewed by the Inspector General, Dennis testified under oath that after he submitted his bids, he would then receive a call from Crawley telling him to “check his math.” Dennis stated that he interpreted Crawley’s direction as Crawley’s signal to him to alter the bid to a lower bid price. Dennis explained: “If they’re [Crawley and CACHE] saying my math is wrong, that means get it down a little bit. I’m not dumb; I’m not naive.” When asked how well he knew Crawley, EVS’s Harry Dennis replied, “Well enough.” Dennis explained that he did not socialize with Crawley, and he had been to Crawley’s house only once when Dennis performed complimentary service work on Crawley’s broken furnace during a winter night in 2010. That instance, however, was not the first time Dennis performed a furnace repair at no charge for Crawley: in the spring or summer of 2009, Dennis fixed an elderly woman’s boiler at Crawley’s request. Crawley urged Dennis not to charge CACHE and instead write a letter to CACHE Executive Director Gladys Walker, advising her that he had donated his time. Shortly thereafter Dennis (EVS) was awarded the first of four suspicious contracts, each of which is discussed below.

(1) First Suspect Contract Award

On July 1, 2009, CACHE mailed to EVS as well as other contractors, and publically announced, a request for proposals (RFP) for the contract to perform all heating unit maintenance for a one-year period as part of CACHE’s Weatherization Assistance Program. Bids were sought for two separate contracts: one for service on gas burning units and the other for oil fired units. The winner of this contract would have the exclusive right to perform all of the “clean and tune” of oil or gas furnaces in homes

receiving weatherization upgrades performed by CACHE. The RFP required that all bids be received by CACHE by July 14, 2009.

As for the bids, one company bid that it would charge the same amount, \$189.95, for oil and gas burning units. Another firm bid \$155.97 to perform maintenance work on oil burners, but declined to bid on the gas furnace work. Harry Dennis of EVS bid \$205.00 for oil services and \$130.00 for gas services. On July 14, CACHE held a bid opening and review meeting led by Crawley. Rather than awarding the contracts to the lowest bidders – the oil service work to the company that bid \$155.97, and the gas work to EVS at \$130.00 – EVS was inexplicably awarded both contracts. However, EVS’s bid for the oil work was \$205.00, higher than both competing bids - \$155.97 and \$189.95, respectively.

7-14-09
BID SUMMARY

REQUIREMENTS: Heating System Clean and Tune- Gas Fired Units
Heating System Clean and Tune- Oil Fired Units

BID CLOSE DATE /TIME: 14,JULY 2009, 10:47AM

BID OPENING DATE/TIME: 14JULY 2008,10:30AM

PROPOSERS: C&C PLUMBING AND HEATING
EVS OIL BURNER SERVICES
COUNTY PETROLEUM

1) C&C PLUMBING BID CLEAN AND TUNE OIL \$189.95 GAS \$189.95
2) EVS BURNER SERVICES CLEAN AND TUNE OIL \$205.00 GAS \$130.00
3) COUNTY PETROLEUM CLEAN AND TUNE OIL 155.97 GAS 0

NOTICE TO BIDDER: This bid summary represents the bid prices received by C.A.C.H.E.Inc.Only. Successful bidder has been determined. The successful bidder will be **EVS BURNER SERVICES** FOR OIL @ \$205.00 AND **EVS BURNER SERVICES** FOR GAS@ \$130.00

Thank you for participating in the bidding process!
Jimmy B Crawley
Wx-Director

When queried by the Inspector General as to why the contractor who bid \$155.97 was not awarded the oil clean and tune contract, Crawley claimed that the company previously had been “banned” by CACHE. Based on this assertion, the Inspector General retrieved CACHE files regarding this company and discovered two letters from 2003 to this company from CACHE’s Executive Director complaining about workmanship, but neither letter even suggests that the company had been banned from bidding on CACHE weatherization projects. Moreover, if true, the basis for not awarding the contract to the lowest bidder clearly should have documented in the official procurement file as required by DHCR’s weatherization policy manual and federal regulations (10 CFR Part 600): “[F]ailure to use a low bidder must be based on

documentation that the bidder is not responsible or has not been responsive....”
However, CACHE’s procurement file contains no indication of that purported justification for not awarding the contract to the company.

Telephone records reveal three calls between Dennis and Crawley following CACHE’s bid opening meeting and the award of both contracts to EVS. Following the award to EVS, CACHE received a letter from Dennis revising the portion of his bid for the oil contract from \$205.00 per unit to \$170.00 per unit, which was lower than the remaining bid of \$189.95. Dennis’s letter to CACHE, dated only July 2009, is reproduced below.


July, 2009

**CACHE Inc.
Attn: Jimmy Crawley
63 South Main Street
Liberty, NY 12754**

To Whom It May Concern:

I, Harry Dennis owner of EVS Burner Service appreciate the oil contract; but due to a clerical error the price of \$205.00 per cleaning shall be \$170.00 for each clean and tune. Once again I appreciate the contract, and your patience.

Thank You



Harry Dennis

Suspiciously, the Inspector General discovered in Crawley’s file on this contract what appears to be a rough draft or template of the very same letter bearing Dennis’s signature (see below).

To whom it may concern

I Harry Dennis owner of EVS Burner Service appreciate the oil contract; but due to a clerical error the price of \$205.00 per cleaning shall be \$170.00 for each clean and tune. Once again I appreciate the contract, and your patience.

Thank You

Harry Dennis

The Inspector General confronted Dennis with a copy of the unsigned draft letter discovered in Crawley's file; Dennis maintained that, despite the coincidence in similarity between the two letters, no one at CACHE wrote the letter for him that he signed.

Dennis admitted that the alteration of his bid was at Crawley's instigation and was not based upon a "clerical error." According to Dennis, Crawley called him and asked him, "Is your math correct?" Dennis testified that he then inquired as to what Crawley meant, and he was informed by Crawley, "Re-look at your bid that you had written up and just double-check your math." Dennis subsequently admitted that "saying my math is wrong ... means get it [the bid price] down a little bit." When asked again why he would drop the price of the work from \$205.00 to specifically \$170.00 after being awarded the bid, Dennis provided no plausible explanation, other than he was told by Crawley to double-check his math.

(2) Second Suspect Contract Award

On July 24, 2009, CACHE publically announced and mailed to certain contractors, including EVS, a RFP for a boiler replacement contract at a weatherization program participant's home. According to the RFP, any companies seeking the contract

were required to submit a bid by 1:00 p.m. on August 10, 2009. One company submitted a bid on July 31 for \$5,500. Cellular telephone records revealed that later that same day Crawley called Dennis three times. Over the next few days, five more telephone calls occurred between them. Most of these calls were not made on Crawley's CACHE-issued cell phone, but rather on his personal cell phone.

Subsequently, on August 7, CACHE received three other companies' bids in the amounts of \$6,690.19; \$7,775.00; and \$5,500.00. On the August 10th deadline, Crawley called Dennis at 7:52 in the morning, and at 8:36 a.m., Dennis phoned Crawley. About a half-hour after this second telephone call, Dennis submitted his bid proposal to CACHE in the amount of \$5,300.00, two hundred dollars lower than the next lowest bid. Notably, Dennis's bid is replete with white out and changes to his bid figures and lacked the requisite notarization. Nevertheless, after two bid review meetings held between Crawley and other CACHE employees, in addition to a few more telephone calls between Crawley and Dennis, on August 24, the contract was awarded to EVS.

(3) Third Suspect Contract Award

A few months later, on October 30, 2009, CACHE announced the RFP for an ARRA-funded clean and tune contract – a contract similar to the first contract discussed above, but financed with federal stimulus money instead of state funds. Bids were due on November 10, 2009. Telephone records reveal that between the announcement of the RFP (October 30) and the deadline for bids (November 10), Crawley and Dennis exchanged five telephone calls. On November 10 - the deadline for all bids and prior to the submission of EVS's bid - five more calls occurred between them.

CACHE received bids from three contractors for two ARRA clean and tune contracts: one for gas fired units and another for oil furnaces. One contractor bid \$244.00 per oil fired unit and \$220.00 per gas burning furnace. Another company bid \$143.30 per oil unit only, but did not submit a gas unit bid. EVS bid \$175.00 per oil unit and \$150.00 per gas fired unit.

The Inspector General examined all of the bids. Unlike the bids submitted by the other two contractors, EVS's bid contained crossed out figures and revised costs. The Inspector General questioned Dennis about the alterations to his bid. Dennis claimed the numbers were changed before the bid went to CACHE. When asked if anyone at CACHE had spoken to him or suggested to him to check his math on this bid submittal, Dennis thought for a moment, and said he could not recall if anyone had done so. Dennis acknowledged that Crawley could have called him to check his math on his ARRA clean and tune bid, but he was not certain. When queried as to why he altered pricing on items in his bid submittal, Dennis claimed that after initially completing the bid, he allegedly learned he could attain some of the items at a lower cost, and he blamed his inexperience in preparing bid prices for the errors.

Despite the obvious changes to the EVS bid, CACHE accepted it and held a bid opening and review meeting on November 10. The meeting lasted approximately 15

minutes before Crawley adjourned it without awarding the contracts. The next morning Dennis called Crawley. Despite not having the lowest bid for the oil fired unit service, on November 19, Dennis was inexplicably awarded both oil and gas ARRA clean and tune contracts.

No explanation is indicated in CACHE's procurement file as to why the lower bidder of \$140.30 per oil unit was not awarded that portion of the contract instead of EVS. When asked to explain, Crawley merely insisted, contrary to all documentary evidence, that EVS was the lowest bidder.

(4) Fourth Suspect Contract Award

The last suspicious contract awarded to EVS was to replace the boiler unit at the Fairview Housing (Fairview) complex, a multi-unit apartment building located in Monticello, New York. Prior to the RFP, Dennis visited the Fairview and supplied Crawley with specification for the project (e.g., the heating capacity of the furnace necessary for the space) to be used in crafting the RFP. The manager of Fairview advised the Inspector General that Dennis met her at Fairview in April 2010, and she explained, "In my mind, I'm thinking oh good, so I didn't have to worry about him getting the bid for it ... because if you're writing up the bid specs you're not bidding on the project."

DHCR's Weatherization Assistance Program Policies and Procedure Manual clearly states, "In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements." Despite this policy and accepted procurement practices precluding any contractor who supplied the job specifications from bidding on the contract, Crawley permitted Dennis to bid.

When the Inspector General questioned Crawley about this breach of policy, he claimed, under oath, that all bidders went to Fairview to inspect it prior to bidding. The Inspector General then clarified that Dennis had gone to Fairview on April 24, 2010, to "spec out the job," two weeks prior to the publication of the CACHE RFP; Crawley, however, denied the possibility of such an occurrence, opining, "He might have been looking at it to see what he needs for the job." When asked how a bidder could possibly inspect a job two weeks before the issuance of the RFP, Crawley evaded the question by asking who else may have gone out to Fairview before the RFP was issued. The Inspector General repeated to Crawley that Dennis was the only contractor that went to Fairview to prepare specifications for the job. Regardless, Crawley continued to emphatically deny such,

On May 7, 2010, CACHE publicly issued the RFP and sent it to certain contractors, including EVS. All bids were due by 2:00 p.m. on May 17. Two bids were received by CACHE: one by EVS for \$6,280.00 and another by a competitor plumbing company for \$5,900.00. Both bids contained line items for materials and labor with a breakdown of costs in support of the total bid price.

During CACHE’s bid opening and review meeting, it was apparent that both bids contained mathematical errors, i.e., the line item costs did not add up to the total listed on the bids. The competitor’s bid should have totaled \$5,700.94, while EVS’s bid should have totaled \$5,810.00. DHCR’s weatherization policy manual states that, “When the error/mistake is minor (informality or irregularity), waive it or allow the bidder to either verify or correct his/her bid; when the error/mistake is obvious or apparent, have the bidder verify the bid and correct the bid....”

CACHE afforded both contractors an opportunity to make the appropriate mathematical revisions. However, phone records reveal that between the adjournment of the bid review meeting and the receipt of the revised bids, Crawley used his personal cell phone to call Dennis three times. No record was found of any such calls to the competitor company.

The competitor’s bid was faxed to CACHE on May 17, at 4:19 p.m. The competitor’s revised bid contained no changes to the line item prices of the bid; it only included the corrected arithmetic, appropriately listing a total of \$5,700.94. Shortly thereafter EVS’s bid was faxed to CACHE at 4:24 p.m., but included a new total of \$5,700.00, which reflected new line item prices for a total bid price \$110 less than the initial correctly totaled bid. Suspiciously, EVS’s winning bid was just 94 cents lower than the competitor’s losing bid. Below is a chart detailing the timing of the events leading up to the award of the Fairview to EVS.

Date	Time	Event	Bid Amount
5-03-10	8:22 AM 8:34 AM	Crawley personal cell makes two calls to Dennis (EVS Burner Service)	
5-07-10		Bid announced & mailed to contractors – bids due by 5-17-10 at 2:00 PM	
5-17-10	7:17 AM	CACHE office calls Dennis	
	11:09 AM	Competitor’s bid #1 received	\$5,900.00
	11:35 AM	EVS bid #1 received	\$6,280.00
	2:00 PM	CACHE bid meeting #1 begins	
	2:07 PM	CACHE bid meeting # 1 adjourned	
	2:29 PM	Crawley personal cell call to Dennis	
	4:01 PM	Crawley personal cell call to Dennis	
	4:05 PM	Crawley personal cell call to Dennis	
	4:19 PM	Competitor’s bid #2 received by CACHE Via Fax	\$5,700.94
	4:24 PM	EVS bid #2 received by CACHE Via Fax	\$5,700.00
5-18-10	10:00 AM	CACHE bid meeting #2 begins	
	10:08 AM	CACHE bid meeting #2 adjourned	
	3:53 PM	Crawley personal cell call to Dennis	
	4:02 PM	Crawley personal cell call to Dennis	

Compounding the dubious nature of the Fairview procurement, Crawley presented two bid documents purportedly from EVS which he identified to the Inspector General as

being originals. The first submittal, dated May 18, 2010, bearing the signature of Harry Dennis, indicated a total price of \$6,280.00, with a red line through the total price and \$5,700.00 written in red next to it. The second, with the same date and also bearing Harry Dennis's signature, indicated a total price of \$5,700.00, but included different line item prices in the bid.

When the Inspector General proffered these two bids to Dennis, he testified that Crawley had instructed him to sign two blank bid forms on May 18. Dennis denied inputting any numbers or totals on the bids and noted that the numbers were not in his handwriting. A comparison of these two bid submittals with others obtained from the CACHE contract file reveals subtle differences in the writing style. During an interview with the Inspector General, Crawley denied having Dennis sign two blank bid forms, stating, "Absolutely not, never happened. I have nothing to gain and nothing to lose." Yet Crawley offered no plausible explanation for the existence of four different bid documents from EVS.

Conclusions Regarding EVS

As detailed above, the evidence strongly supports that Crawley steered four of CACHE's weatherization-related contracts to Dennis. Both Dennis and Crawley denied bid rigging or kickbacks on any of the four suspect procurements. Crawley even denied any communication between Dennis and himself over his home telephone line, stating, "Maybe he called once, if that," an assertion belied by the telephone records. However, a CACHE employee advised the Inspector General that after concerns were raised internally about Crawley steering contracts to EVS, Crawley reportedly stated, "First of all, does anybody know how the bid things work? Because I'm allowed to change the numbers, and I can do what I want." This claim is supported by Dennis, who conceded, "I'm not a stupid man.... If they're saying my math is wrong, that means get it down a little bit." The evidence clearly established that with regard to these four procurements: the RFP was issued, communications occurred between Crawley and Dennis; Dennis altered his bids; and Crawley awarded the contracts to EVS.

The Inspector General will refer these four bid steering scenarios to the New York State Attorney General's Office for consideration of criminal charges, including perjury. Additionally, the Inspector General recommends that DHCR provide expansive procurement training to employees of CACHE, as well as to similar not-for-profit agencies receiving state and ARRA funding. DHCR should also review its policy and procedure manual to ensure that agencies conducting competitive bidding receive clear, detailed guidance.

CACHE's Inventory Deficiencies

The Inspector General also established that CACHE lacked adequate inventory controls over supplies and equipment purchased with ARRA and state funds intended for its weatherization program. CACHE maintains a warehouse in which both its regular weatherization program and ARRA-funded weatherization materials are housed.

In the fall of 2009, an inventory check of the warehouse's contents conducted by CACHE employees in the presence of a DHCR auditor resulted in a "write-off"¹ of \$7,100.60 worth of materials. DHCR officials advised the Inspector General that even though DHCR had originally paid for those items, DHCR did not require CACHE to reimburse DHCR for the inventory that was written off. Rather, DHCR only required CACHE do a complete physical inventory and improve its internal controls. DHCR policy requires that the written-off items be disposed of in the presence of DHCR staff. Windows over five years old, outdated caulk, and other materials with an expired shelf life were discarded by CACHE in accordance with DHCR policy. DHCR staff noted that agencies the size of CACHE would normally only accrue between \$100 and \$400 in obsolete equipment each year.

During the first week of March 2010, CACHE completed another physical inventory in which another \$4,697.12 was written off. Due to the discovery of additional discrepancies, DHCR conducted its own inventory in early June of 2010. DHCR did not actually conduct the inventory count, but rather a DHCR auditor observed a CACHE employee perform such. While internal control weaknesses were found, the inventory "seemed to be pretty accurate," according to the DHCR auditor. However, the DHCR auditor could not, given the significant control weaknesses, reconcile the inventory count with the reported inventory in the agency's books as inputted by CACHE's finance officer.

DHCR recommended that CACHE conduct periodic spot checks of the inventory. DHCR also suggested someone of authority co-sign the material use sheets when materials are used, as currently only the person utilizing the items must sign. It was further recommended that CACHE combine its regular and ARRA weatherization inventories and that the agency should purchase all items with regular weatherization funds and then transfer the expense to ARRA as items are used for ARRA projects. CACHE has yet to adopt these recommendations, but DHCR's auditor does not view such as a non-compliance issue. "I can only suggest," I cannot force CACHE to implement the recommendations.

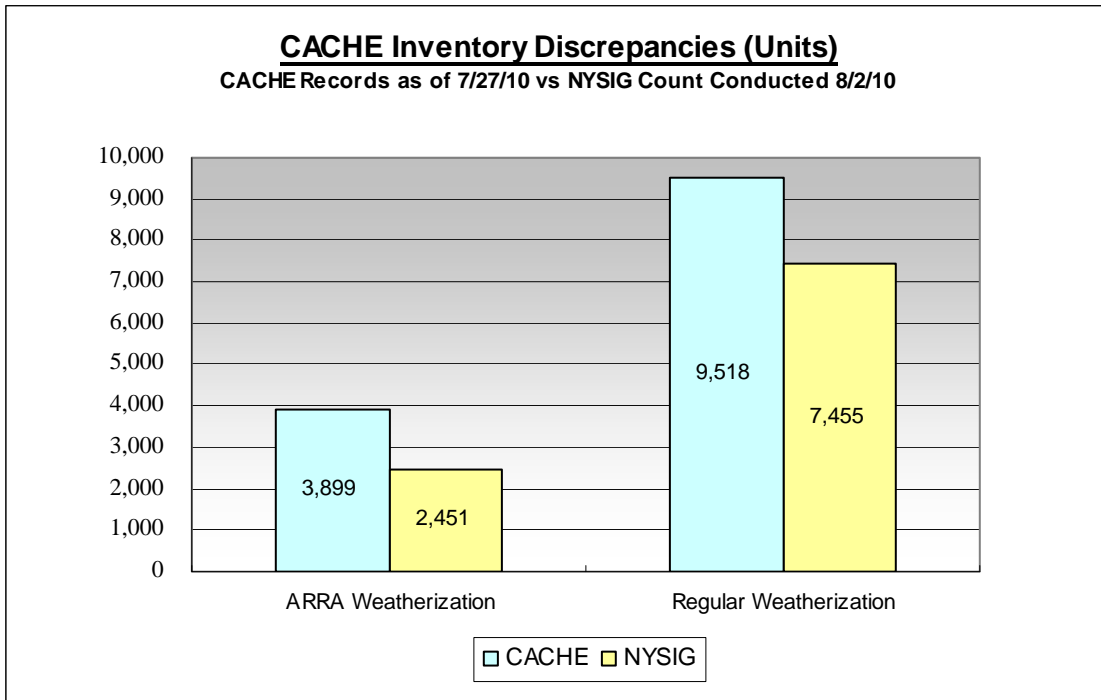
In August 2010, the Inspector General conducted an inventory of CACHE's regular Weatherization Assistance Program and ARRA-funded weatherization materials. A few days prior to conducting the physical count, the Inspector General obtained CACHE's weatherization inventory for both ARRA and regular weatherization. These files contained the most current representation of what items CACHE should have in its inventory stores.

In total, the Inspector General counted 82 different items of inventory reported in CACHE's inventory records, including 49 ARRA and 33 non-ARRA funded items. The Inspector General's physical count for 66, or 81 percent, of the items varied from what CACHE had reported in its inventory. Of the 66, the Inspector General's count was lower than CACHE's inventory for 49 items and greater for 17. The Inspector General

¹ The term write-off describes a reduction in recognized value. In accounting terminology, it refers to recognition of the reduced or zero value of an asset.

was unable to locate in CACHE's inventory 906 units, with an estimated value of at least \$3,510. The Inspector General further counted an additional 165 units, with an estimated value of at least \$2,118, for items that were understated in CACHE's inventory.

In addition, the Inspector General located 15 items (estimated 116 units) that were not included in CACHE's inventory. Included among these items were 17 windows, 55 CFL bulbs, and 7 ventilation fans. Other items included pipe insulation and light fixtures. When incorporating these items, the Inspector General identified an estimated 281 units of inventory that were not reported in CACHE's inventory and could not locate 906 units that CACHE claimed to possess.



While some of the discrepancies may be excusable, such as items being used during the three days prior to the count, the magnitude of the disparity between the Inspector General's physical count of items and CACHE's records reflects extremely poor inventory controls at CACHE. Such poor controls increase the likelihood of items being stolen or used for unintended purposes.

As explained above, DHCR was well aware of these deficiencies, yet corrective action was minimal and inadequate to address the problems. The Inspector General, therefore, recommends that DHCR conduct training and provide agencies with proper protocols to account for weatherization-related property. Furthermore, DHCR should exercise greater oversight of agencies' inventory, and where deficiencies are identified, recoup monies for missing property and enforce stricter internal controls by withholding funds from those agencies that fail to remedy problems.

CACHE's Failure to Abide by ARRA's Prevailing Wage Requirements

During the course of the investigation, the Inspector General discovered that CACHE failed to comply with the prevailing wage requirements of ARRA by paying certain employees less than the established wage rate on ARRA-funded weatherization projects.

The federal Davis-Bacon Act provides that locally prevailing wages and fringe benefits must be paid to laborers and mechanics employed on federally funded contracts exceeding \$2,000 that may involve construction, alteration, maintenance or repair.² ARRA Section 1606 requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government pursuant to ARRA shall 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 in accordance with subchapter IV of chapter 31 of title 40, United States Code. Simply put, all programs or activities funded by ARRA and meeting the Davis-Bacon criteria will be subject to federal prevailing wage requirements.

Consequently, effective March 29, 2010, CACHE's weatherization crew working in Sullivan County were required to earn a gross salary of at least \$10 per hour plus an additional \$3.93 per hour in salary or agency paid benefits.³ Prior to that date, the prevailing rate was only \$10 per hour.⁴ CACHE's weatherization crew supervisor reported to the Inspector General that CACHE had designated a two-man ARRA and a two-man regular weatherization crew, but they all work together on both ARRA and non-ARRA funded jobs. However, he added that the regular weatherization staff members were not paid the higher prevailing wage amount even though they conducted the same work on ARRA-funded projects as CACHE's ARRA crew members.

The Inspector General analyzed the payroll for all CACHE weatherization crew to determine whether any were not paid the applicable prevailing wage for ARRA weatherization work. The analysis was broken into two components: (i) a comparison of rates paid for reported ARRA work expensed to CACHE's ARRA weatherization contract, and (ii) a comparison of rates paid for unreported ARRA work charged to CACHE's regular weatherization contract. The latter entailed comparing material use sheets for weatherization jobs to CACHE's payroll and prevailing wage rates.

The Inspector General determined that CACHE failed to comply with prevailing wage requirements by paying six weatherization employees hourly wages below the applicable prevailing rate. For three of the six employees, CACHE expensed the payroll costs to its ARRA weatherization contract yet did not pay the appropriate hourly wages.

² 40 U.S.C. §§ 276a - 276a-7.

³ As per U.S. Department of Labor Decision Number S2009-NY-001, issued December 11, 2009, and effective March 29, 2010, according to the U.S. Department of Labor.

⁴ As per U.S. Department of Labor Decision Number 2009-NY-001, issued September 3, 2009. No specific rate existed prior to September 3, 2009; however, all CACHE payroll for ARRA occurred after September 3, 2009.

For three other employees, CACHE expensed the payroll costs to its regular (non-ARRA) weatherization contract, which is not subject to prevailing wage requirements, even though other CACHE records indicate these employees actually worked on ARRA weatherization projects.

The Inspector General estimated the above-referenced employees were underpaid a total of nearly \$2,200 since the beginning of CACHE's ARRA weatherization contract. This amount consists of \$1,459 in underpayments for ARRA work that CACHE allocated to its ARRA contract and \$736 in underpayments for ARRA work allocated to its regular weatherization contract.

CACHE payroll records indicated two employees were compensated for at least part of the amount they were underpaid, subsequent to their employment at CACHE ending. These employees received payments on May 12, and June 28, 2010 for ARRA "benefit pay" amounting to \$3.93 per hour for a portion of the hours they had worked on ARRA for which they were originally paid only \$10 per hour. However, neither received "benefit pay" compensation for all ARRA work. Specifically, one CACHE crew member was only compensated for 161.25 of the 191.75 hours CACHE reported he worked on ARRA, while another was only paid for 73.25 of 113.25 such hours.

The Inspector General has referred this matter to the U.S. Department of Labor for its review and appropriate action.

FINDINGS AND RECOMMENDATIONS

The Inspector General found significant bidding irregularities by CACHE, a recipient of federal stimulus or ARRA funds pursuant to a grant contract with DHCR. Furthermore, the evidence strongly suggests that CACHE's Director of Weatherization, Jimmy Crawley, improperly steered four contracts to EVS Burner Services, including an ARRA-funded contract to clean and tune gas and oil furnaces. The Inspector General has provided copy of this report to the New York State Attorney General's Office for review and consideration of criminal charges, including perjury. Additionally, the Inspector General recommends that DHCR provide expansive procurement training to employees of CACHE, as well as to similar not-for-profit agencies receiving state and ARRA funding. DHCR should also review its policy and procedure manual to ensure that clear, detailed guidance is provided to these agencies conducting competitive bidding.

The Inspector General also established that CACHE lacked adequate inventory controls over supplies and equipment purchased with ARRA and state funds intended for its weatherization program. While DHCR auditors were well aware of these deficiencies, corrective action was minimal and inadequate to address the problems. The Inspector General, therefore, recommends that DHCR conduct training and provide agencies with proper protocols to reasonably account for weatherization-related property. Furthermore, DHCR should exercise greater oversight of agencies' inventory, and where deficiencies are identified, recoup monies for missing property and enforce stricter internal controls by withholding funds from those agencies that fail to remedy problems.

The Inspector General further discovered that CACHE failed to comply with the prevailing wage requirements of ARRA by paying certain employees less than the established wage rate on ARRA-funded weatherization projects. The Inspector General has referred this matter to the U.S. Department of Labor for its review and appropriate action.

Given the significant deficiencies identified by the Inspector General, DHCR and other state agencies providing funding to CACHE should conduct an extensive review of its ARRA and state funded programs. DHCR and other state agencies should ensure that CACHE implements adequate internal controls and comply with applicable laws, regulations and policies.