

Staff Review: 2010 Energy-Efficiency Grant to JDC Manufacturing, LLC

In light of the media inquiries on the subject, documents related to an energy efficiency grant made in 2010 to JDC Manufacturing, LLC, under the American Recovery and Reinvestment Act of 2009 were reviewed. The findings suggest that further legal review is warranted. Of particular concern were issues associated with potential conflicts of interest related to contracts awarded by the grantee to contractors during the execution of the grant project.

The grant in question was a \$250,644 grant to JDC Manufacturing LLC (managed by John Carter Hagan, David Blair Hagan and Charles "Chip" Tilden Hagan, III) for an energy-efficiency project at the company's building in Reidsville, N.C. The building's tenant was Plastics Revolution (John Hagan, President). The grant agreement included several provisions prohibiting self-dealing. For example, form "2010SEPCoMINDNonprofit1" which is incorporated by reference into the grant agreement provides:

"Applicants should note that the State requires compliance with self-dealing rules for Grantees and their contractors and subcontractors. These rules require, among other things, that no one with direct lineal relations may receive incentive payment. **For example, the mother, father, brother, sister, son or daughter of a contractor working in this Program cannot receive Awards, contracts and subcontracts.**" (emphasis added) (See attachment A; Grant Agreement Document incorporating 2010SEPCoMINDNonprofit1; page 9 of 2010SEPCoMINDNonprofit1)

Similarly, federal Department of Energy Assistance regulations, incorporated into the grant agreement, provide:

"The recipient shall maintain written standards of conduct governing the performance of its employees engaged in award and administration of contracts. **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.**"

A review of the grant records indicates a number of transactions that appear to be executed between JDC Manufacturing LLC, and companies controlled or managed by members of the same family. For example, the documents appear to show that JDC Manufacturing LLC, (managed by John Carter Hagan, David Blair Hagan and Charles "Chip" Tilden Hagan, III) contracted with SolarDyne, LLC for the solar portion of the project. SolarDyne, LLC, not the low bidder on the project, is currently registered with the N.C. Secretary of State as "Green Street Power, LLC" and is managed by C Tilden Hagan, IV; Charles T. Hagan; and William H. Stewart. Another subcontract was awarded to Circuit Makers, Inc. for the solar installation. Tilden Hagan is listed as an employee of Circuit Makers, Inc. and William Stewart appears to be the "Business owner" of Circuit Makers. (See Attachment B for summary of document review)

These contracts, along with other contracts, appear to be in conflict with the self-dealing provisions of the grant agreement. Given our initial findings, staff recommend that this grant be specifically reviewed as part of the State Auditor's Office audit of the American Reinvestment and Recovery Act. (See, Attachment C; October 21, 2014 letter to Beth Wood, State Auditor).

Because this situation involves a possible violation of the grant agreement involving state funds, consistent 09 NCAC 03M .0802, this matter should be reported to the State Budget and Management Office for further review. If the Office of State Budget and Management finds any apparent violation of a criminal law or malfeasance, misfeasance, or nonfeasance in connection with the use of state funds, the Office of State Budget and Management is required to refer the matter to the Attorney General and the State Bureau of Investigation.

ATTACHMENT A

Grant Agreement Form

The Grant Agreement between the Department of Commerce, Energy Division (the "Agency") and the Grantee named below consists of all rights and obligations contained in the following:

- a. Funding Opportunity and Invitation to Submit Applications for the SEP Energy Efficiency Projects for Commercial, Industrial and Large Nonprofit Sectors (2010SEPComIndNonprofit1), including all Appendices and amendments thereto;
- b. Grantee's Application/Proposal as approved by the SEO;
- c. DOE Award Agreement DE-EE0000157, as the same may be amended from time to time;
- d. Applicable Directives of the OERI at <http://qa.norecoverycms.na.gov/Compliance/OERIDirectives.aspx#>;
- e. SEP regulations, 10 CFR Part 420 at <http://ecfr.gpoaccess.gov>; and
- f. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov>.

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this Grant Agreement. In witness whereof, the Grantee and the Agency have executed this Grant Agreement which shall become effective on the date executed by the Agency.

ORGANIZATION: JDC Manufacturing, LLC

CONTACT PERSON: John Hagan

CONTACT INFORMATION: 336-337-1985 336-272-7965 hydrojohnhagan@aol.com
Phone Fax E-mail

BY: John Hagan (Signature) TITLE: Manager DATE: 8-11-10

John Hagan
(Printed name)

***** (Dept. of Commerce use only) *****	
BY: <u>634</u>	TITLE: <u>Deputy Secretary</u>
(Signature)	(Signature)
<u>Date B. Carroll</u>	
(Printed name)	
Grant Code (non-State Entities):	

THIS PAGE MUST BE SIGNED AND INCLUDED IN YOUR APPLICATION.



State Energy Program
Energy Efficiency Projects for Commercial, Industrial
and Large Nonprofit Sectors

Solicitation No. 2010SEPComIndNonprofit1

Funded through the American Recovery and Reinvestment Act
of 2009

Issue Date: July 9, 2010

Application Closing Date: 2:00 p.m., August 11, 2010

Mailing Address:
1340 Mail Service Center
Raleigh, NC 27699-1340

Telephone (919) 733-2230
Fax (919) 733-2953
www.energync.net

Location:
1830A Tillery Place
Raleigh, North Carolina 27604

Pursuant to OERI Management Directives 3, 3(a), and 3(b), applicants who are political sub-divisions of the state are required to use the state Interactive Purchasing System for any purchase of goods or services using ARRA funds in excess of \$5,000. Applicants who are non-state entities receiving ARRA funds under this Funding Opportunity should be aware that they are required to use and document transparent competitive processes approved by SEO for the procurement of goods and services when using ARRA funds.

Applicants should be aware that federal guidance on implementation of Projects and reporting is regularly updated. Grantees will be responsible for complying with current and future requirements related to the Award. The SEO recognizes the tenuous nature of the above statement. The SEO will help Grantees in this and other Programs to comply with the applicable requirements. The intent of the SEO is to utilize ARRA funds in a way that stimulates the economy, builds businesses and saves energy. This can only be accomplished in a cooperative environment.

Eligibility Requirements

Eligibility for this Funding Opportunity is open to owners of commercial, 2) industrial and 3) Qualified Non-Profit facilities. Eligible Applicants may receive no more than one Award during this Solicitation Period for this Funding Opportunity.

In addition, proposed Projects must meet the following criteria:

1. The Project activities must be undertaken in North Carolina.
2. The Applicant may not apply for a second Award for activity which the Applicant already has received an Award under a previous Funding Opportunity.
3. An Applicant that, in the judgment of the SEO, has failed to correct a material breach of a Grant Agreement under any program administered by the SEO, is ineligible to submit an application.
4. An Applicant who is debarred, suspended or otherwise excluded from or ineligible for participation in federal or State financial assistance activities is ineligible for an Award.
5. The Applicant must be current on all tax obligations to the local, State and federal governments.
6. Only Applications for funding in excess of \$100,000 will be considered. Applications including multiple Projects, must have an aggregate value of \$100,000 in order to be considered.

Please note that only Projects that are categorically excluded from the National Environmental Policy Act (NEPA) as determined by the SEO and/or the DOE and that do not require a full environmental assessment or environmental impact statement are eligible for an Award under this Funding Opportunity. Please see additional NEPA requirements in the Required Forms section of the Application Requirements.

Applicants should note that the State requires compliance with self-dealing rules for Grantees and their contractors and subcontractors. These rules require, among other things, that no one with direct lineal relations may receive incentive payment. For example, the mother, father, brother, sister, son or daughter of a contractor working in this Program cannot receive Awards, contracts and subcontracts.

Funding Objectives

This competitive Funding Opportunity will provide funding for eligible Applicants to retrofit eligible facilities with energy-efficient commercially available technologies that reduce energy use.

The proposed Project must meet the objectives outlined below:

- Systems installed shall use commercially available technologies that create sustainable and cost-effective energy savings through a program that establishes energy-efficient retrofit results.
- Create and implement a mechanism for identifying energy savings opportunities, implementing retrofits and monitoring/verifying energy savings. This mechanism should be created in a way that is sustainable beyond the duration of funding from this contract. Retrofit activity must be monitored to ensure that quality work is performed.
- Provide education and outreach to property tenants that addresses behavioral, maintenance or other actions they can take to reduce energy consumption.

Funding can be used to support equipment purchases, contracting and installation. A preference will be given to Projects that can be completed expeditiously and within one year of the Award. All Projects must be completed prior to December 30, 2011. Prior to commencing work, projects must have local approvals, permits and requirements complete, as appropriate. Installation also must be in accordance with local plumbing, electrical, mechanical and contractor requirements

If funding for more than one project is requested, an Applicant must prioritize the projects so that, if all projects cannot be funded, we can fund those with the highest stated priority. For a project to receive final approval design documents shall be made available for inspection, as appropriate and non-binding estimates shall be submitted with the response. Participants will be limited to a maximum of \$500,000 (five hundred thousand) total for all projects.

Also note that solar water heating systems must be either SRCC rated (OG -100) or meet Florida Solar Energy Center Standard 101-09. Boilers are not eligible for funding under this Funding Opportunity. Electrical components must be UL-listed.

**JDC Manufacturing, LLC
Conflict of Interest Policy**

Conflict of Interest Defined:

A conflict of interest is defined as an actual or perceived interest by a Board member, staff member, or employee in an action that results in, or has the appearance of resulting in personal, organizational, or professional gain. A conflict of interest occurs when an employee/Board member has a direct or fiduciary interest in another relationship.

Employee Responsibilities:

It is in the interest of the company, individual staff, and Board members to strengthen trust and confidence in each other, to expedite resolutions of problems, to mitigate the effect and to minimize organizational and individual stress that can be caused by a conflict of interest.

Employees are to avoid any conflict of interest, even the appearance of a conflict of interest. The appearance of a conflict of interest can cause embarrassment to the company jeopardize the credibility of the company. Any conflict of interest, potential conflict of interest, or the appearance of a conflict of interest should be reported to your supervisor immediately.

Acceptance of Gifts:

Employees, members of employee's immediate family, and members of the Board are prohibited from accepting gifts, money or gratuities from persons receiving benefits or services from the company.

ATTACHMENT B

- JDC Manufacturing, LLC owns the building which was the subject of the grant project
 - JDC is managed by John Carter Hagan, David Blair Hagan and Charles "Chip" Tilden Hagan, III
 - JDC submitted the proposal for the grant project to the North Carolina Department of Commerce's State Energy Office in 2010
 - Charles "Tilden" Hagan, IV approved a JDC Purchase Order to Solar Electric Distributor, and was also listed as a grantee representative of JDC on a Site Visit and Monitoring Report
 - JDC proposed to divide out the overall grant project into 3 separate projects including 1) replacing the outdated lighting (Electrical); 2) replacing the inefficient furnaces (HVAC); and 3) installing photovoltaic panels (Solar)
 - JDC sought out proposals from three electrical contractors for the Electrical project and ultimately selected Electric Systems, Inc., the lowest bidder
 - JDC sought out proposals from three heating contractors for the HVAC project and ultimately selected American Industrial Contractors, Inc., the lowest bidder
 - JDC subgranted with Plastic Revolutions for the Solar project
 - JDC proposed to utilize the services of WC Sustainable Services to manage the project
 - JDC represented that competitive bids were sought
- Plastic Revolutions, Inc. is the tenant of the project building
 - John Hagan is President of Plastic Revolutions
 - Plastic Revolutions was listed as a Sub-Grantee, within the Impact Report Information, for the project and was tasked to "Coordinate and assist JDC with the installation of PV solar panels, and the interconnect with Duke Energy."
 - Plastic Revolutions contracted with William H. Stewart, III for services related to installation of the solar system
 - Plastic Revolutions contracted with Circuit Makers, Inc. for solar installation
 - Circuit Makers contracted with Tilden Hagan, also listed as a Circuit Makers' employee on a Labor Standards Interview, and Will for solar installation labor. Will was listed as "Business Owner" on a Circuit Makers' invoice to Plastic Revolutions
 - SolarDyne, LLC was contracted with by an unknown party
 - SolarDyne is now registered with the NC Secretary of State as "Green State Power, LLC"
 - SolarDyne is managed by C Tilden Hagan, IV, Charles T Hagan and William H. Stewart, III
 - John Hagan and Tilden Hagan are listed as a SolarDyne contacts on a groSolar invoice to SolarDyne for SMA Ambient Temperature Sensor
 - SolarDyne contracted with groSolar for solar parts
- The project Grant Agreement consists of all rights and obligations contained in the following:
 - Funding Opportunity and Invitation to Submit Application for the SEP Energy Efficiency Projects for Commercial, Industrial and Large Nonprofit Sectors (2010SEPCoIndNonprofit1), including all Appendices and amendments thereto;
 - A copy of the 2010SEPCoIndNonprofit1 solicitation includes within its Eligibility Requirements:

- “Applicants should note that the State requires compliance with self-dealing rules for Grantees and their contractors and subcontractors. These rules require, among other things, that no one with direct lineal relations may receive incentive payment. For example, the mother, father, brother, sister, son or daughter of a contractor working in this Program cannot receive Awards, contracts and subcontracts.”
- A copy of the 2010SEPComIndNonprofit1 solicitation includes within its Conflicts of Interest section:
 - “Non-State Grantees except that non-State entities subject to the audit and other reporting requirements of the Local Government Commission are excluded from these requirements; see NCGS §143C-6.23 and 143C-1.1(d)(19)) are required to file with the SEO a copy of the Grantee’s policy addressing conflicts of interest that may arise involving the Grantee’s management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the Grantee’s employees or members of its board or other governing body, from the Grantee’s disbursing of State funds, and shall include actions to be taken by the Grantee, the individual or both to avoid conflicts of interest and the appearance of impropriety. For a sample policy addressing conflicts of interest, see Appendix A- Required Forms.” – a copy of the solicitation is attached, please also see a copy of JDC’s Conflict of Interest Policy, attached, which was included within JDC’s proposal.
 - NCGS §143C-6.23 provides in relevant part: “Conflict of Interest Policy. - Every grantee shall file with the State agency disbursing funds to the grantee a copy of that grantee’s policy addressing conflicts of interest that may arise involving the grantee’s management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the grantee’s employees or members of its board or other governing body, from the grantee’s disbursing of State funds, and shall include actions to be taken by the grantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State agency may disburse the grant funds.”
 - NCGS §143C-6.23 further provides the Office of State Budget and Management shall adopt rules to ensure the uniform administration of State grants by all grantor State agencies and grantees or subgrantees. 09 NCAC 03M .0203 is one such administrative rule.
 - 09 NCAC 03M .0203 requires subgrantees that receive State Funds, which include federal financial assistance received by the State and transferred or disbursed to non-State entities (both Federal and State funds

maintain their identity as they are subgranted to other organizations), ensure that any subgrantees comply with all the reporting requirements of the grantee.

- Grantee's Application/Proposal as approved by the SEO;
 - DOE Award Agreement DE-EE0000157, as the same may be amended from time to time;
 - Applicable Directives of the OERI at <http://qa.ncrecoverycms.nc.gov/Compliance/OERIDirectives.aspx#>;
 - SEP regulations, 10 CFR Part 420 at <http://ecfr.gpoaccess.gov>; and
 - DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov>
 - § 600.143 Codes of conduct provides in relevant part: "The recipient shall maintain written standards of conduct governing the performance of its employees engaged in award and administration of contracts. 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."
 - § 600.143 Competition provides in relevant part: "All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contracts that may restrict or eliminate competition or otherwise restrain trade."
- In the NC Grant Compliance Reporting of Receipt of >=\$25,000, question #7
 - JDC indicates that the organization did not subgrant or pass down any funds to another organization.

Items noticeably absent from JDC Manufacturing, LLC's grant notebook are copies of any of JDC's subcontractors/subgrantees certifications, if any, which seem to be a reporting requirement under 09 NCAC 03M .0203.

ATTACHMENT C



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

October 21, 2014

Beth A. Wood, CPA, State Auditor
State of North Carolina
20601 Mail Service Center
2 S. Salisbury Street
Raleigh, NC 27699-0601

Dear Auditor Wood,

The Department of Environment and Natural Resources and Department of Commerce request your assistance in addressing concerns identified within the State Energy Program (SEP), formerly known as the State Energy Office, and the Weatherization Assistance Program (WAP). Specifically, we request that the State Auditor's Office conduct a thorough review and audit of American Reinvestment and Recovery Act (ARRA) funds received and dispersed through the two sections.

These two programs, previously housed in the Department of Commerce, were moved to the Department of Environment and Natural Resources in October 2013.

In January, the State Auditor's Office completed an investigation of a WAP subgrantee. Due to concerns raised as a result of the investigation, DENR staff was directed to conduct a study of the WAP.

We have since identified areas in which further improvements could be made and have taken the necessary steps to begin addressing them. However, recent correspondence with the U.S. Department of Energy has indicated it's possible that an approximately \$132 million ARRA grant awarded in 2009 has not been closed out. These funds were granted to the state with the intent to weatherize more than 23,500 single-family and multi-family homes across the state before March 2012. We were of the understanding that NC ARRA Weatherization was completed and closed out in June 2013.

DENR is expanding its internal audit section to further investigate and rectify issues within the WAP as a whole. However, NC ARRA issues appear to extend into the SEP as well.


The complexity of ARRA funding has proven to be a challenge in determining the scope and accountability of the program. We request your assistance in determining what steps need to be taken to close out the grants, to identify if any monies are owed to the federal government, and to ensure all ARRA funds are accounted for and were properly handled by the SEP and WAP.

Our departments greatly benefitted from the work conducted by you and your staff previously and would appreciate your willingness to accept this audit request. We ask that Barry Long, the project lead on a previous subgrantee audit, be involved because he is familiar with the WAP and would provide continuity in this endeavor. Should you have any questions or need additional information, please contact John Skvarla at (919) 707-8622.

Sincerely,



John E. Skvarla, III, Secretary
Department of Environment and Natural Resources



Sharon Decker, Secretary
Department of Commerce

cc: Mitch Gillespie, Assistant Secretary for Environment
Tracy Davis, Director, Division of Energy, Mineral, and Land Resources
Cecilia Holden, Special Assistant to the Secretary
Heather Horton, Director, DENR Internal Audit
Rex A. Whaley, DENR Chief Financial Officer