RCLC Update on Responses & Adopted Controls
Regarding OSA 2018 Audit Findings

June 24, 2019

The New Mexico Office of the State Auditor (OSA) issued the results of an audit of the Regional Coalition of LANL Communities (RCLC) on August 7, 2018 enumerating 18 findings in the manner in which the RCLC and its fiscal agent maintain financial operations. The RCLC Board, made up elected officials from the nine member communities has recognized that the findings delineate legitimate issues that require attention and as such have adopted or are in the process of adopting areas of control in line with or exceeding all New Mexico State Auditor recommendations. These responses have been submitted to the OSA.

In addition to the adopting the recommendations of the OSA, the RCLC has also added additional areas of control, creating a second layer of financial review inside the Executive Director vendor’s offices, and an expanded role for an independent third party accounting services that will provide for a review process for all disbursements. In addition, the RCLC is in the process of contracting for legal counsel to provide legal guidance to the board in its decision making process.

The OSA recommendations and the RCLC’s course of actions to date are delineated below.

Finding 2018-001 The RCLC Board approved reimbursements to Andrea Romero Consulting, LLC or JLH Media, Inc. for meals, alcoholic beverages or entertainment expenses for Board members who would not have been entitled to receive per diem and mileage themselves, in violation of the Per Diem and Mileage Act and NMAC 2.42.2.1 (Material Weakness)

Criteria
NMAC 2.42.2.8 (C)(3) addresses public officers who serve in dual capacities. It states:

- Non-salaried public officers who also serve as public officers or employees of state agencies or local public bodies may receive mileage or per diem rates from only one public entity for any travel or meeting attended. Furthermore, non-salaried public officers who are also public officers or employees may not receive per diem rates for attending meetings held in the place of their home or at their designated posts of duty unless they are on leave from their positions as public officers or employees. Local public bodies may adopt regulations with respect to the receipt of per diem by employees or officers of local public bodies who also serve on boards or commissions subject to this rule.

Cause
The RCLC Board and its fiscal agent, Los Alamos County, appear to have been unaware of the prohibition on paying per diem for non-salaried public officers who serve in a dual capacity on two different boards when they attend a luncheon or dinner meeting that would not otherwise qualify for per diem because it is held in the officer’s home jurisdiction.

Effect
The RCLC appears to have improperly reimbursed JLH Media, Inc. or ARC, LLC for meal expenses for public officers in their home jurisdictions.

**Recommendation**
The RCLC Board should ensure that it follows the requirements of NMAC 2.42.2.1 et seq. when providing mileage or per diem reimbursements to any of its Board members.

**RCLC Response**
The RCLC concurs with the recommendation and changed its policies and procedures to ensure that it complies with the requirements of NMAC 2.42.2.

**RCLC Adoption of Areas of Control**
- The FY 2019 RCLC budget was amended to assume that the respective local governments handle all board member travel directly, and the FY 2020 budget adopted on June 7, 2019 continued this practice.
- In addition, the executive director services contract adopted in August 2018 assumes that the executive director’s travel is handled directly by that vendor and not as a reimbursable expense.
- If there should be any instances where the RCLC board approves any exceptions and pre-approves any travel to be paid by the RCLC, the RCLC adopted a policy that requires the treasurer and fiscal agent to sign off on reimbursements. The new policy also mandates that all expenditures be reviewed for compliance with RCLC policy, local government procurement policy and state regulations, including the requirements of NMAC 2.42.2. In addition, the treasurer, board, fiscal agent, and third party accountant will review and verify that any allocated funds are from appropriate accounts and authorized sources.
Finding 2018-002 The RCLC Board approved reimbursements to Andrea Romero Consulting, LLC or JLH Media, Inc., which included expenses for other guests, which is prohibited by both the Travel Policy Section VIII and the Per Diem and Mileage Act (Material Weakness)

Criteria
Section VIII of the Travel Policy states, “Prohibited expenses include, but are not limited to, the following:
- Personal items, including personal grooming items
- Beverages and snacks, hotel mini bar charges
- Gifts
- Entertainment and recreation expenses, including hotel movie and health club activities
- Golf outings, fitness events and other “recreational” activities
- Alcoholic Beverages
- Expenses for spouses, guests or family members

NMAC 2.42.2.1 et seq. does not contain any provisions that allow for payment of per diem rates to persons who are not public officers or employees.

Cause
The RCLC did not follow its own Travel Policy or the NMAC Rule with regard to reimbursements for meals for third party guests of the Executive Director.

Effect
The RCLC improperly expended public funds to pay for meals for individuals who are not public officers or employees.

Recommendation
The RCLC should follow the rules applicable to a local public body when paying any per diem reimbursements.

RCLC Response
The RCLC concurs with the recommendation and changed its policies and procedures to ensure that it complies with the requirements of NMAC 2.42.2.

RCLC Adoption of Areas of Control
- The FY 2019 and FY 2020 RCLC budgets assume that the respective local governments handle all board member travel directly. Since this policy was adopted all board member travel has been paid for directly by the member entities.
- In addition, the executive director services contract adopted in July 2018 assumes that the executive director’s travel is handled directly by that vendor and not as a reimbursable expense. The executive director contractor has acted accordingly and all travel for the ED team has been paid for directly by the vendor.
- If there should be any instances where the RCLC board approves any exceptions and pre-approves any travel to be paid by the RCLC, the RCLC adopted a policy that requires the treasurer and fiscal agent to sign off on reimbursements. The new policy also mandates that all expenditures be reviewed for compliance with RCLC policy, local government procurement policy and state regulations, including the requirements of NMAC 2.42.2. In addition, the treasurer, board, fiscal agent, and third party accountant will review and verify that any allocated funds are from appropriate accounts and authorized sources.
Finding 2018-003 The RCLC Board approved reimbursements to JLH Media, Inc. or Andrea Romero Consulting, LLC for expenditures for alcoholic beverages, personal expenses and entertainment and recreation expenses, in violation of the Travel Policy and state law. (Material Weakness)

**Criteria**

Section VIII of the Travel Policy states, “Prohibited expenses include, but are not limited to, the following:

- Personal items, including personal grooming items
- Beverages and snacks, hotel mini bar charges
- Gifts
- Entertainment and recreation expenses, including hotel movie and health club activities
- Golf outings, fitness events and other “recreational” activities
- Alcoholic Beverages
- Expenses for spouses, guests or family members

The RCLC did not follow its own Travel Policy or the NMAC Rule with regard to reimbursements for meals for third party guests of the Executive Director.

**Effect**

The RCLC improperly expended public funds to pay for entertainment expenses and alcoholic beverages for both its own Board members as well as individuals who are not public officers or employees.

**Recommendation**

The RCLC should follow the rules applicable to a local public body when paying any per diem reimbursements.

**RCLC Response**

The RCLC concurs with the recommendation and changed its policies and procedures to ensure that it complies with the requirements of NMAC 2.42.2.

**RCLC Adoption of Areas of Control**

- The FY 2019 and FY 2020 RCLC budget assume that the respective local governments handle all board member travel directly.
- In addition, the executive director services contract adopted in July 2018 assumes that the executive director’s travel is handled directly by that vendor and not as a reimbursable expense. The executive director contractor has acted accordingly and all travel for the ED team has been paid for directly by the vendor.
- If there should be any instances where the RCLC board approves any exceptions and pre-approves any travel to be paid by the RCLC, the RCLC adopted a policy that requires the treasurer and fiscal agent to sign off on reimbursements. The new policy also mandates that all expenditures be reviewed for compliance with RCLC policy, local government procurement policy and state regulations, including the requirements of NMAC 2.42.2. In addition, the treasurer, board, fiscal agent, and third party accountant will review and verify that any allocated funds are from appropriate accounts and authorized sources.
Finding 2018-004 JLH Media, Inc. charged NM gross receipts tax on mileage and travel and per diem expenditures resulting in double taxation to the RCLC. (Significant deficiency)

**Criteria**
DFA 95-1 permits the reimbursement of mileage and actual receipts for expenditures up to $30 per day (in state) and $45 per day (out of state) excluding lodging. NM Gross Receipts tax is not calculated on reimbursements to the extent that it would equate to taxing an already imposed tax.

**Cause**
JLH Media, Inc. did not consider taxation regulations when compiling expenditures and mileage to be included in the monthly billing and the Fiscal Agent did not adequately review invoices prior to payment, indicating that neither party understands NM taxation regulations.

**Effect**
The contracted Executive Director claimed NM gross receipts tax on mileage and travel and per diem expenditures resulting in double taxation to the RCLC.

**Recommendation**
Invoices should be scrutinized for clerical or application errors prior to payment by the fiscal agent.

**RCLC Response**
The RCLC concurs with the recommendation and is in the process of developing and implementing an agreement with the fiscal agent and an independent accountant that specifies these duties. Los Alamos County (LAC), which serves as the RCLC’s fiscal agent, concurs with the recommendation and is developing and implementing an agreement with the RCLC that specifies these duties.

**RCLC Adoption of Areas of Control**
- The RCLC has contracted with an independent accountant that begins serving the organization in July 2019. Components of the controls and delineation of duties includes the independent accountant and the fiscal agent reviewing all expenditures and payments, prior to issuance.
- The RCLC the fiscal agent, Los Alamos County are in the process of developing and implementing an agreement that specifies these duties.
Finding 2018-005 Duplicate billing of mileage by Contractor (Significant deficiency)

Criteria
The Contact agreement for Executive Director Services provides that reimbursement of travel costs shall be in accordance with the RCLC’s Travel Policy. The Travel Policy provides that “No specific mode of transportation is mandatory. However, staff members are expected to use the most economical means available with reasonable consideration given to the time and distance involved.” The Travel Policy also provides for in-state travel to be approved by the Executive Director.

Cause
A lack of proper monitoring by the Executive Director prior to submission to the fiscal agent for processing of payment. Additionally, the Executive Director is responsible for approving the in-state travel for which her company requests reimbursement. There is a lack of internal controls in the Travel Policy which can allow a contract Executive Director to financially benefit from his or her own travel approvals.

Effect
The RCLC reimbursed what appear to be excessive, duplicate mileage charges by the Executive Director that do not appear to comply with the Travel Policy.

Recommendation
The Executive Director should not be allowed to approve in-state travel if the Executive Director will receive reimbursement for that travel under his or her contract. The Coalition should ensure that all expenditures related to the contract Executive Director be reviewed and authorized by someone other than the Executive Director.

RCLC Response
The RCLC concurs with the recommendation and changed its policies and procedures to ensure that all expenditures related to the executive director contract be reviewed and authorized by someone other than the Executive Director.

RCLC Adoption of Areas of Control
- The executive director services contract adopted in July 2018 assumes that the executive director’s travel is handled directly by that vendor and not as a reimbursable expense.
- If there are any instances where the RCLC board approves any exceptions that requires additional expenditures for travel by the executive director or staff, the RCLC Board has adopted a policy that requires the treasurer and fiscal agent to sign off on reimbursements.
- The new policy also mandates that all expenditures be reviewed for compliance with RCLC policy, local government procurement policy and state regulations, including the requirements of NMAC 2.42.2. In addition, the treasurer, board, fiscal agent, and third party accountant review and verify that any allocated funds are from appropriate accounts and authorized sources.
Finding 2018-006 The RCLC Governing Board not exercising control over finances in accordance with the Joint Powers Agreement Act, § 11-1-5(D), NMSA 1978 (Material Weakness)

Criteria
The RCLC Board’s responsibility for control over the Coalition’s finances is set forth in the Joint Powers Agreement Act § 11-1-4(D) and Section 9 of the Joint Powers Agreement which formed the RCLC. Both the statute and the Agreement provide that the RCLC Board is “strictly accountable” for all receipts and disbursements of the entity.

Cause
The RCLC failed to follow the requirements of the Joint Powers Agreement Act, and the Agreement itself.

Effect
The RCLC improperly expended public funds in violation of state law.

Recommendation
In order to ensure that each party is fulfilling its statutory duties and fiduciary responsibilities to the RCLC, the Executive Director and Coalition Board should implement and formalize policies and procedures for the processing of transactions. Additionally, the Coalition Board should provide training to all members and contractors. Only payments reviewed in accordance with the policies and procedures and related laws and regulations should be approved by the Board’s Treasurer prior to processing by the fiscal agent.

RCLC Response
The RCLC concurs with the recommendation and is formalizing and implementing appropriate policies and procedures.

RCLC Adoption of Areas of Control
- The RCLC has developed, and is formalizing and implementing policies and procedures for the processing of transactions so that only appropriate transactions are approved by the RCLC Treasurer and Board prior to payment processing by the fiscal agent. This includes review of all expenditures by a third party accountant, as delineated above.
- The RCLC Board will also regularly provide training to all members and contractors.
Finding 2018-007 Travel expenditures in excess of board approved budget (Material Weakness)

**Condition**

In fiscal years 2015 and 2018, the RCLC expended more than the approved $10,000 annual budget for travel purposes separately for contract staff and board. The fiscal agent combines the travel into one line-item making it difficult to ascertain whether either or both exceed budgetary authority. The total amount for 2014-2015 was $433.22 over the combined budgeted total of $20,000. The total amount for 2017-2018 was $1,012.04 over the combined budgeted total of $20,000.

**Criteria**

The RCLC Travel Policy states that both the board and contract staff are separately authorized up to $10,000 annually for travel purposes.

**Cause**

The Coalition’s Board and fiscal agent did not perform adequate oversight and approval of expenditures. By combining the expenditure in one account it was impossible to verify compliance with the budget.

**Effect**

The RCLC reimbursed unauthorized expenditures totaling $1,445.26. Non-compliance with the RCLC travel policy requirement not to exceed $10,000 for travel purposes separately by the Contract staff and the Board resulting in unauthorized expenditures.

**Recommendation**

The Coalition’s Board and fiscal agent should review appropriate travel policies and should perform regular and consistent oversight and approval of expenditures in relation to their adopted policies.

**RCLC Response**

The RCLC concurs with the recommendation and changed its policies and procedures to ensure that it complies with the requirements of NMAC 2.42.2.

**RCLC Adoption of Areas of Control**

- The FY 2019 and FY 2020 RCLC budgets assume that the respective local governments handle all board member travel directly.
- In addition, the executive director services contract adopted in July 2018 also assumes that the executive director’s travel is handled directly by that vendor and not as a reimbursable expense.
- This new RCLC travel policy is structured to ensure compliance with the requirements of NMAC 2.42.2, even in cases where the RCLC Board may wish to adopt an exception, and pre-approves RCLC paid travel.
- In addition, the RCLC adopted policies and procedures for the processing of transactions so that the RCLC Treasurer approves only appropriate transactions, voted on by the RCLC Board, and reviewed by an independent accountant prior to payment processing by the fiscal agent.
Finding 2018-008 Potential non-compliance with the Department of Energy Grant Award with regard to explicitly prohibited lobbying (Material Weakness)

**Criteria**
The Department of Energy Grant contains an explicit restriction on federal lobbying efforts. Paragraph 17 of the Grant Agreement states:

*By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913, Lobbying with appropriated moneys. This restriction is in addition to those prescribed elsewhere in statute and regulation.*

Section 18 U.S.C. 1913 provides:

§1913. Lobbying with appropriated moneys

*No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.*

**Cause**
The RCLC may have failed to abide by the terms of the DOE Grant when it “Engaged with NNSA and House Armed Services on alternatives and discussion on our strategy to ensure this revenue is protected.” In addition, the RCLC’s self-described state lobbying activities may have violated 18 U.S.C. 1913.

**Effect**
Possible non-compliance with the DOE grant agreement which could result in the claw back of approximately $372,000.

**Recommendation**
The Coalition’s Board and fiscal agent should ensure that it follows all lobbying restrictions with regard to any federal or state grant funds it receives.

**RCLC Response**
The RCLC agrees with the recommendation that the RCLC Board should ensure that it follows all lobbying restrictions with regard to any grants it receives. The RCLC agrees that there were insufficient controls separating the colors of money, but disagrees with the actual finding, arguing that only a minority fraction of RCLC’s activities and expenditures relate to advocacy activities, and that there is clearly more
than enough non-grant member contribution revenue to cover those costs, ensuring that restricted grant revenues are not utilized for prohibited lobbying activities.

**RCLC Adoption of Areas of Control**

- The RCLC has opened separate bank accounts, one for restricted grant funds, and another for unrestricted funds. The fiscal agent has transferred all RCLC funds into these accounts thereby segregating restricted grant funds from unrestricted funds, and also separate all RCLC funds from the fiscal agent’s other accounts.
- The RCLC’s executive director contract adopted in July 2018 also requires that invoices show the allocation of tasks and compensation due, split between those that are DOE grant applicable and those that are not. All invoices from the contractor since have complied with these guidelines.
- As mentioned earlier, the RCLC also contracted with a third party accounting services that, beginning in July 2019 will provide for a review process for all disbursements from the segregated special revenue fund for grant activity.
Finding 2018-009 Potential violations of (Executive Order 12674) Fourteen Principals of ethical Conduct for Federal employees’ item 4 related to the solicitation or acceptance of gifts. (Material Weakness)

**Criteria**
(Executive Order 12674) Fourteen Principles of Ethical Conduct for Federal Employees states:

4. Employee shall not, except as permitted by the Standards of Ethical Conduct, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

**Cause**
Unknown cause however, the appearance is that the meals and entertainment may have been used to influence an official action.

**Effect**
Potential non-compliance with DOE’s (Executive Order 12674) Fourteen Principals of ethical Conduct for Federal employees’ item 4 related to the solicitation or acceptance of gifts.

**Recommendation**
The Coalition’s Board should create a policy that prohibits any coalition staff from purchasing, gifts, meals or entertainment for federal employees.

**RCLC Response**
Although criteria relates to the actions of federal employees is not a standard that applies to the actions of the RCLC, given the expected occasional interactions with federal employees, the RCLC concurs with the recommendation and has changed its policies.

**RCLC Adoption of Areas of Control**
- The RCLC Board has adopted a policy prohibiting RCLC Board, staff and contractors from purchasing gifts, meals or entertainment for federal employees.
Finding 2018-010 Breach of Fiduciary Duty by the Fiscal Agent – Los Alamos County (Material Weakness)

Criteria
The fiscal agent has a fiduciary duty to process receipts and expenditures. In addition, the fiscal agent should exercise due care in reviewing proposed expenditures and obtain proper approval from RCLC officers prior to payment. Also the County had no written procedures regarding processing of RCLC transactions.

Cause
Since there were no standard procedures, expenditures were made without prior written approval. The fiscal agent, Los Alamos County did not seek approval subsequent to the expenditures by the contractor and/or board members. In addition, the subsequent approval was made by someone not familiar with the rules regarding travel and per diem.

Effect
The RCLC paid expenditures that were not eligible under state law or travel and per diem policies.

Recommendation
The Board should create and implement policies and procedures for expenditures that require approval of the board or authorized representative prior to payment. The policies should adhere to all applicable state laws and administrative rules.

RCLC Response
The RCLC concurs with the recommendation and has adopted policies and procedures for the processing of transactions so that only appropriate transactions are approved by the RCLC Treasurer prior to payment processing by the fiscal agent.

RCLC Adoption of Areas of Control
- The RCLC has adopted policies and procedures for the processing of transactions so that only appropriate transactions are approved by the RCLC Treasurer, voted on by the RCLC Board, and reviewed by an independent accountant prior to payment processing by the fiscal agent.
- In coordination with the fiscal agent and independent accountant, the RCLC will develop a training for all members, contractors and fiscal agent staff. This training will specifically cover policies and procedures and related laws and regulations regarding the issuance of public monies, and procedures for RCLC Treasurer and Board approval prior to processing by the fiscal agent.
Finding 2018-011 Failure to comply with State Audit Act (Material Weakness)

**Criteria**
The Joint Powers Act Section 11-1-1 to 11-1-7, NMSA 1978, specifically, Section 11-1-5 C states:

“The agency shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement, subject to any of the restrictions imposed upon the manner of exercising such powers of one of the contracting public agencies or such restrictions of any public agency participating which may be designated or incorporated in the agreement.”

Additionally, on February 20, 2013, the OSA issued a letter of determination stating that the RCLC was a “special district”, further classified and subject to all regulations and laws of a “local public body”, including the Audit Act.

**Cause**
A deliberate decision was made by the RCLC and/or its fiscal agent to avoid an audit of the RCLC funds.

**Effect**
The lack of oversight of public monies through the Audit Act led to improper payments from public funds and non-compliance with laws, regulations, statutes and agreements which may result in criminal violations.

**Recommendation**
Beginning with the fiscal year ending June 30, 2018, the Coalition should immediately become compliant with the State Audit Act and have all financial statements audited by an approved auditor on the OSA website.

**RCLC Response**
The RCLC concurs with the recommendation and is in the process of coming into compliance with the State Audit Act.

**RCLC Adoption of Areas of Control**
- The RCLC has contracted with an OSA approved auditor to complete audits on the previous six years.
- In addition, the FY 2020 RCLC budget includes funding for an annual audit.
Finding 2018-012 Fiscal Agent combined RCLC monies with Los Alamos County’s pooled cash account resulting in a lack of transparency (Material Weakness)

**Cause**
The fiscal agent uses a pooled cash account for all transactions of Los Alamos County including those of the RCLC.

**Effect**
The inability to identify discrepancies and to reconcile the individual funds included in pooled cash. Additionally, it does not appear that the RCLC or Los Alamos County have properly reconciled cash accounts.

**Recommendation**
It is recommended that the RCLC, through its fiscal agent, create a separate bank account and a special revenue fund to track the assets, liabilities, equity, revenues and expenditures of the RCLC.

**RCLC Response**
The RCLC concurs with the recommendation and has opened separate bank accounts.

**RCLC Adoption of Areas of Control**
- The RCLC has opened separate bank accounts, one for restricted grant funds, and another for unrestricted funds. This will segregate restricted grant funds from unrestricted funds, and separate all RCLC funds from the fiscal agent’s other accounts.
- The RCLC has also contracted with a third party accounting services that, beginning in July 2019 will provide for a segregated special revenue fund for grant activity accounting.
- The RCLC’s executive director contract adopted in July 2018 also requires that invoices show the allocation of tasks and compensation due split between those that are DOE grant applicable and those that are not.
Finding 2018-013 A miscoding of expenditures and using a pooled cash account, resulted in the RCLC paying for expenditures of Los Alamos County (Material Weakness)

**Cause**
The fiscal agent uses a pooled cash account for all transactions including those of the RCLC. The fiscal agent utilizes the same chart of accounts with only slight variation.

**Effect**
The RCLC paid for expenditures that were not intended for the RCLC. As a result there is a misappropriation of Coalition cash assets and the financial reports presented to the board may not be accurate.

**Recommendation**
Together the Coalition and the fiscal agent should brainstorm ways to rectify the lack of controls and monitoring while minimizing the impact to the Coalition vendors who receive payment. It would be advisable to create a separate bank account and a special revenue fund to track the assets, liabilities, equity, revenues and expenditures of the RCLC.

**RCLC Response**
The RCLC concurs with the recommendation and has opened separate bank accounts. The RCLC has also contracted for third party accounting services.

**RCLC Adoption of Areas of Control**
- The RCLC has opened separate bank accounts, one for restricted grant funds, and another for unrestricted funds. The fiscal agent has transferred all RCLC funds into these accounts. This has segregate restricted grant funds from unrestricted funds, and also separate all RCLC funds from the fiscal agent’s other accounts, making a similar clerical error of this sort impossible.
Finding 2018-014 Improper reporting of contract labor (Material Weakness)

**Criteria**
Internal Revenue Service Code states that all earnings are subject to tax. For a contractor, all payments are reported on form 1099 and are subject to federal, state and self-employment tax on the net income of the contractor.

**Cause**
The Coalition, through its fiscal agent, did not properly accumulate all payments to the contractor in each calendar year.

**Effect**
The Coalition did not comply with IRS requirements nor the State of New Mexico’s taxation requirements. The Coalition issued incorrect 1099’s which were used in the reconciliation of annual federal and state taxes. The Coalition did issue corrected 1099’s subsequent to the deadlines for tax filings.

**Recommendation**
The Coalition will need to evaluate the potential consequences with the IRS and NM Taxation and Revenue Department and find ways to rectify the noncompliance while minimizing the impact to the Coalition. Further analysis of 1099 forms and contractor payments is required for all contractors paid more than $600 in each calendar year. At a minimum, the Coalition should analyze 1099’s from inception of the RCLC to current and make every effort to correct 1099 forms and related reporting. The Coalition and its fiscal agent staff responsible for the issuance of public monies should receive additional training with regard to IRS regulations related to contractors/vendors.

**RCLC Response**
The RCLC and the fiscal agent, LAC concurs that 1099 forms should be correct.

**RCLC Adoption of Areas of Control**
- LAC as fiscal agent making disbursements for the RCLC will conduct regular reviews of all RCLC vendor information to ensure the 1099 forms are correct.
- The RCLC has also contracted with an independent accountant that will work with and review 1099’s prior to issuance by the fiscal agent.
Finding 2018-015 Improper accounting for reimbursements, including the netting of reimbursements with expenditures. (Significant deficiency)

**Criteria**
Generally accepted accounting principles and grant accounting do not provide for the netting of reimbursements with expenditures as it creates misstatements in both revenues and expenditures for the period.

**Cause**
The Executive Director filed the reimbursement claim with the refund reflected but the fiscal agent did not properly apply U.S. GAAP when processing the reimbursement perhaps as a result of no Board approved fiscal policies or procedures.

**Effect**
The Coalition’s financial statements may be misstated. Additionally there may be a violation of U.S. GAAP and of grant accounting. Netting of reimbursements with expenditures does not allow for proper follow-up of reimbursements due to the RCLC and creates an environment ripe for fraud, waste and abuse.

**Recommendation**
The Coalition should comply with U.S. GAAP and grant accounting to ensure proper reporting and tracking of reimbursements due to the RCLC.

**RCLC Response**
The RCLC concurs with the recommendation and is contracting with a third party accountant to address this deficiency.

**RCLC Adoption of Areas of Control**
- The RCLC has contracted a third party accountant services that specifies compliance with U.S. GAAP, grant accounting and tracking of reimbursements due to the RCLC, amongst other services.
Finding 2018-016 Management Could Not Provide All Requested Information (Material Weakness)

**Criteria**
Section 14-3-13 NMSA 1978 requires the Coalition to carefully preserve and protect public records.

**Cause**
It is unknown why the Coalition and its fiscal agent did not provide all supporting documentation.

**Effect**
The Coalition’s Board or its fiscal agent did not provide all supporting documentation requiring the OSA to obtain documents through other means and resulting in a concern that there may be other documents that were not provided or that there may be an underlying reason for not providing the documentation. Missing records can be indicators of more serious issues including fraud.

**Recommendation**
The Coalition and its fiscal agent should have a filing system that enables them to locate supporting documentation for all Coalition transactions.

**RCLC Response**
The RCLC concurs with the recommendation and has changed its policies and procedures to ensure that supporting documentation for all transaction is properly maintained.

**RCLC Adoption of Areas of Control**
- The RCLC Board has directed the executive contractor to develop procedures to control and archive all RCLC documents in a manner that is transferable to the board and future contractors.
- The current RCLC Executive Director contractor has established a second tier of internal controls for all financial transactions, including archiving of all financial documents, contracts, and RCLC legal documents.
Finding 2018-017 Budget irregularities (Significant deficiency)

**Criteria**
Good accounting practices indicate that financial data should be clerically accurate. Additionally, the statement on the budget indicates that it is the Board's intent to not utilize the DOE grant funding for travel.

**Cause**
A lack of proper oversight by the Board and fiscal agent with regard to budgeting.

**Effect**
The Coalition’s budget is not accurate and may be misleading for the board.

**Recommendation**
The Coalition should prepare its budget and ensure that it is clerically accurate and that the RCLC has appropriate funding for all costs associated with the RCLC.

**RCLC Response**
The RCLC concurs with the recommendation and has contracted with a third party accounting services that specifies preparation of a budget.

**RCLC Adoption of Areas of Control**
- The RCLC has contracted with a third party accountant services that amongst other services will assist the ED and board in the preparation of a budget that is clerically accurate and has appropriate funding for all costs associated with the RCLC.
2018-018 Failure to comply with the State Constitutions Anti-Donation of Public Monies Act Article IX (Material Weakness)

**Cause**
The Executive Director(s) submitted, to the fiscal agent, previously paid invoices and receipts for reimbursement by the RCLC. Many of these reimbursement requests did not have prior approval by the Board so the fiscal agent would obtain, after the fact, approval to pay the reimbursement via email correspondence with a Board member. The Board members may not have had adequate time to review the reimbursements against the RCLC policies and procedures, DFA 95-1, and applicable laws and regulations.

**Effect**
The improper payments may have constituted an unwarranted donation of public funds to private individuals in violation of the Anti-Donation Clause.

**Recommendation**
The Coalition should require review and approval of all invoices prior to the processing of payments by the fiscal agent. Additionally, the Coalition should follow federal and state laws, regulations and agreements with regard to expenditures.

**Response**
The RCLC concurs with the recommendation has changed its policies and procedures to ensure that appropriate reviews and approval of invoices for compliance with all applicable regulations occur prior to authorizing the fiscal agent to make payments.

**RCLC Adoption of Areas of Control**

- The RCLC board has adopted financial policies that clearly delineate the roles and responsibilities of the RCLC board, the Treasurer, the executive director, the third party accountant, and the fiscal agent as it relates to the fiscal transactional business of the RCLC.
- The RCLC has also contracted with an independent accountant firm that, beginning in July 2019 will review all expenditures and invoices to ensure compliance with board policy, state regulations and best practices.