



**OFFICE OF JUSTICE PROGRAMS
BUREAU OF JUSTICE ASSISTANCE
CONGRESSIONALLY MANDATED GRANT TO
MOUNTAINTOP TECHNOLOGIES, INCORPORATED
JOHNSTOWN, PENNSYLVANIA**

U.S. Department of Justice
Office of the Inspector General
Audit Division

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EXECUTIVE SUMMARY*

The U.S. Department of Justice Office of the Inspector General, Audit Division, has completed an audit of an Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA), congressionally mandated grant to MountainTop Technologies, Inc. (MountainTop). Between September 2004 and September 2006, BJA awarded MountainTop a total of \$3,454,668, distributed through one grant and two supplements.¹ The purpose of the grant program was to help improve the ability of law enforcement agencies in southwestern Pennsylvania to fight crime.

**BJA CONGRESSIONALLY MANDATED AWARD
GRANT TO MOUNTAIN TOP**

GRANT AWARD	AWARD DATE	PROJECT END DATE	AWARD AMOUNT
2004-DD-BX-1374	09/23/04	05/31/07	\$ 494,739
Supplement 1	09/23/05	05/31/08	986,643
Supplement 2	09/29/06	05/31/10	1,973,286
Total:			\$ 3,454,668

Source: Office of Justice Programs

The purpose of our audit was to determine whether reimbursements claimed for costs under the grant were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the grant. We also assessed the grantee's performance in meeting grant objectives and overall accomplishments.

We found that MountainTop was in material non-compliance with the grant requirements we tested. We reviewed MountainTop's compliance with

* Names or information that may implicate the privacy rights of individuals under the Privacy Act of 1974, 5 U.S.C. § 552(a) have been redacted, that is, blacked out, from Appendix III so that this report can be issued publicly. No other information has been excised from this public report.

¹ The congressionally mandated award was appropriated to the Office of Community Oriented Policing Services (COPS) under its Law Enforcement Technology and Interoperability grants, and then transferred to OJP (via an interagency agreement) for BJA to administer.

seven essential grant conditions and found material weaknesses in two of the seven areas we tested: (1) monitoring subrecipients and (2) budget management and control. Because of the deficiencies identified, we are questioning \$3,335,583 of the grant funds.

In performing our fieldwork, we found that MountainTop acted solely as a pass-through entity for the grant funds it received and that individuals within Pennsylvania's 12th Congressional District Office (12th District Office) were responsible for most decisions regarding the grant program. Specifically, we found that the 12th District Office directed MountainTop in how to distribute grant funds, including which law enforcement organizations would receive funds and the amount and timing of funds to be disbursed. We found that MountainTop maintained grant-related documentation, including information supplied by those law enforcement agencies receiving funds, submitted required reports regarding the grant, and performed administrative functions for the grant and its supplements, including the submission of grant applications and the confirmation that an outside audit of the program was performed. We also noted that not all law enforcement agencies in the 12th Congressional District of Pennsylvania received grant funds.

MountainTop developed an internal accounting procedure manual entitled *The Congressionally Mandated Grant Management Guide*, designed specifically to manage the OJP grant, following the direction of the 12th District Office. This guide established how funds were to be distributed to the subrecipients and stated:

Law Enforcement agencies within the 12th District begin the check issuing process [distribution of grant funds] by submitting a formal letter to the 12th District Office requesting grant funds and how they intend to use the money. The 12th District Office will review the request and, if approved, they will forward the request letter to the MountainTop program manager with the amount to be disbursed.

The 12th District Office then gave MountainTop "authority", which MountainTop exercised, to disburse funds using checks to the subrecipients in specified amounts. After the funds were received, according to the guide, subrecipients had 90 days to expend the grant money and 100 days to send documentation supporting the grant expenditures to MountainTop. This procedure was in direct violation of the OJP Financial Guide, which required that funds on hand be minimized and limited to disbursements/ reimbursements to be made immediately or within 10 days of the grantee's

drawdown of "Federal cash." MountainTop maintained the supporting documentation provided by the subrecipients for grant expenditures and tracked the grant money spent by the subrecipient agencies.

During our fieldwork, we also found that MountainTop did not provide adequate oversight of grant subrecipients. According to the OJP Financial Guide, as the direct grant recipient, MountainTop was responsible for all aspects of the program, including proper accounting and financial recordkeeping of all subrecipient transactions. We visited 27 of the 118 grant subrecipients that received grant funds through MountainTop to determine the level of monitoring performed by MountainTop. During our visits, we found that MountainTop failed to evaluate the operations, records, systems, procedures, or accounting practices of the subrecipients we selected for review. In reviewing the accounting for grant funds at the subrecipients, we noted instances where grant funds were not deposited in subrecipient accounts, but were held in separate accounts, as well as instances of commingling, and potential supplanting. Although we did not find that grant funds were spent on non-law enforcement activities during our site visits, the risk of waste, fraud, and abuse of grant funds was certainly heightened due to MountainTop's lack of oversight and monitoring.

We also found that MountainTop failed to control and manage the grant budget. MountainTop did not ensure that grant-related expenditures conformed to the approved grant budget. While MountainTop classified all subrecipient expenditures as equipment, our testing found that actual expenditures made by the subrecipients included charges for equipment, personnel, training, and supplies. As a result, we were unable to determine the grant funds expended permissible under the approved grant budget.

In addition to the issues of material non-compliance noted above, we also determined that MountainTop charged overhead and general and administrative rates to the grant without OJP approval to do so.

We found that MountainTop did not have a formal method to measure performance of the program and did not ensure the goals and objectives of the grant were reached.

Lastly, MountainTop's independent auditors should have completed two individual audit reports. However, MountainTop submitted only one of the required annual program specific audits over a 2-year period.

These items are discussed in detail in the Findings and Recommendations section of the report. Our audit objectives, scope, and methodology are discussed in Appendix I.

We discussed our audit findings with MountainTop officials during our fieldwork and included their comments in the report as applicable. However, we have not updated our audit work since then because, based on the irregularities identified, we referred the matter for investigation.

The OIG investigation found that MountainTop's OJP grant application statements about how it would administer the grant funds were not consistent with how MountainTop actually administered those funds. In addition, MountainTop failed to ensure that grant funds were spent in accordance with allowable grant expenditures and the administration processes described in its applications. The investigation further found that MountainTop did not have adequate factual basis for the statements in its certified Financial Status Reports to OJP that it spent the grant funds in accordance with the grant award terms and conditions. In some instances, this lack of factual knowledge resulted in inaccurate certifications by MountainTop. We updated our audit report with this information obtained from the investigation and provided the updated report to MountainTop for its review.

Since our audit work was completed, we noted that MountainTop received a Congressionally Mandated Grant, number 2008-DD-BX-0449, in September 2008 for \$1,964,730. According to grant award documents, MountainTop was again responsible for distributing funds to law enforcement agencies within the 12th District for the purchase of law enforcement equipment. As of February 22, 2011, all of the funds for this grant had been drawn down by MountainTop, and the grant was closed by OJP.

We requested a response to our draft report from MountainTop and OJP, and their responses are appended to this report as Appendix III and IV, respectively. Our analysis of both responses, as well as a summary of the actions necessary to close the recommendations can be found in Appendix V of this report.

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INTRODUCTION

The U.S. Department of Justice Office of the Inspector General (OIG), Audit Division, has completed an audit of an Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA), congressionally mandated grant to MountainTop Technologies, Inc. (MountainTop). Between September 2004 and September 2006, BJA awarded MountainTop a total of \$3,454,668, distributed through one grant and two supplements.² The purpose of the grant program was to help improve the ability of law enforcement agencies in southwestern Pennsylvania to fight crime. The majority of the grant budget provided funding for the purchase of equipment.

BJA CONGRESSIONALLY MANDATED GRANT TO MOUNTAINTOP

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2004-DD-BX-1374	09/23/04	05/31/07	\$ 494,739
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Source: Office of Justice Programs

The objective of our audit was to determine whether reimbursements claimed for costs under the grant were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the grant. We also assessed the grantee's program performance in meeting grant objectives and its overall accomplishments.

Background

Since 1984, OJP has provided federal leadership in developing the nation's capacity to prevent and control crime, improve the criminal and juvenile justice systems, increase knowledge about crime and related issues, and assist crime victims. The BJA provides leadership and assistance in support of local criminal justice strategies to achieve safer communities. The BJA's overall goals are to (1) reduce and prevent crime, violence, and drug abuse and (2) improve the functioning of the criminal justice system.

² The congressionally mandated award was appropriated to the Office of Community Oriented Policing Services (COPS) under its Law Enforcement Technology and Interoperability grants, and then transferred to OJP (via an interagency agreement) for BJA to administer.

MountainTop Technologies, Inc.

MountainTop is located in Johnstown, Pennsylvania, approximately 60 miles east of Pittsburgh. MountainTop is a for-profit, closely-held company focusing on the development, delivery, management, and operation of learning technology and transportation services.

Grant Overview

In performing our audit work, we found that, although MountainTop was the recipient of the BJA grant award, it acted solely as a pass-through entity for the grant funds it received. We determined that individuals working for Pennsylvania's 12th Congressional District Office (12th District Office) were responsible for most decisions regarding the grant program. Specifically, we found that the 12th District Office directed MountainTop how to distribute grant funds, including which law enforcement organizations would receive funds and the amount and timing of fund disbursements. We found that MountainTop maintained grant-related documentation, including information supplied by law enforcement agencies receiving funds, submitted required financial status and progress reports, and performed administrative functions for the grant and its supplements. Administratively, MountainTop submitted grant applications and engaged an accounting firm for an independent audit of the program. We also noted that the ultimate subrecipients of grant funds were law enforcement agencies located exclusively in the 12th Congressional District encompassing a portion of southwestern Pennsylvania. However, we also determined that not all law enforcement agencies in the 12th Congressional District received grant funds.

MountainTop developed an internal accounting procedure manual entitled *The Congressionally Mandated Grant Management Guide*, specifically designed to manage the grant following the direction of the 12th District Office. This guide established how funds were to be distributed to the various law enforcement agencies (subrecipients) and stated:

Law Enforcement agencies within the 12th District begin the check issuing process [distribution of grant funds] by submitting a formal letter to the 12th District Office requesting grant funds and how they intend to use the money. The 12th District Office will review the request and, if approved, they will forward the request letter to the MountainTop program manager with the amount to be disbursed.

The 12th District Office then gave MountainTop “authority,” which it exercised, to disburse grant funds to the subrecipients in specified amounts. After the funds were received by the subrecipients, according to the guide, subrecipients had 90 days to spend the grant money and 100 days to provide MountainTop with documentation supporting their expenditures. MountainTop maintained the supporting expenditure documentation provided by the subrecipients and tracked the grant money spent by each of the various law enforcement agencies.

Because of the irregularities we identified while performing our audit, we referred the matter for investigation. The investigation found that MountainTop’s statements in its OJP grant applications about how the grant funds would be administered did not accurately describe the manner in which they were actually administered. In addition, the investigation substantiated that MountainTop did not ensure that grant funds were spent in accordance with allowable grant expenditures and the administration processes as described in its grant applications. As a result, MountainTop did not have an adequate factual basis for the statements in its Financial Status Reports to OJP, on which it certified that funds were spent in accordance with the grant award terms and conditions. The investigation concluded further that, in some cases, MountainTop’s certifications were plainly inaccurate.

Our Audit Approach

We tested compliance with what we consider to be the most important conditions of the grants. The criteria we audited against are found in the OJP Financial Guide. We tested MountainTop’s:

- **grant expenditures** to determine whether the costs charged to the grant are allowable and supported,
- **monitoring of subrecipients** to determine whether the grantee had taken appropriate steps to ensure that subrecipients comply with grant requirements,
- **Financial Status and Progress Reports** to determine if the required Financial Status Reports and Progress Reports were submitted on time and accurately reflect grant activity,
- **grant drawdowns** to determine whether they were adequately supported and if the grantee was managing grant receipts in accordance with federal requirements,

- **budget management and control** to determine the overall acceptability of budgeted costs by identifying any budget deviations between the amounts authorized in the BJA-approved grant budget and the actual costs incurred for each budget category,
- **program income** to determine if program income was properly accounted for and applied to the grant, and
- **program performance** to determine whether MountainTop achieved grant objectives and to assess performance and grant accomplishments.

When applicable, we also tested for compliance in the areas of matching funds and monitoring of sub-grantees. For the grant award and accompanying supplements to MountainTop, we performed limited work to determine that matching funds were not required and that there were no subgrantees.

FINDINGS AND RECOMMENDATIONS

COMPLIANCE WITH ESSENTIAL GRANT REQUIREMENTS

We determined that MountainTop was in material non-compliance with essential grant requirements. We found that MountainTop: (1) did not adequately monitor grant subrecipients and (2) exercised poor budget management and control. MountainTop was responsible for all aspects of the program including proper accounting and financial recordkeeping of all subrecipient transactions, but did not conduct any independent monitoring of the subrecipients. Due to poor management and inadequate monitoring of subrecipients, we found the grant funds were not spent by the subrecipients according to grant requirements. As a result of these deficiencies, we question \$3,335,583 in grant expenditures, or about 97 percent of the total grant award.

Overview

In performing this audit of the congressionally mandated grant (including two supplements) awarded to MountainTop, we requested detailed grant expenditure information. MountainTop provided over 15 binders of grant related information, mostly consisting of documentation in support of expenditures provided by the 118 subrecipients. We found that MountainTop acted solely as a pass-through entity for the grant funds it received and that individuals working for Pennsylvania's 12th Congressional District Office (12th District Office) were responsible for most decisions regarding the grant program. We determined that MountainTop maintained grant related documentation, submitted required reports regarding the grant, and performed administrative functions for the grant and its supplements.

Grant Expenditures

MountainTop's grant expenditures consisted of (1) personnel and indirect costs related to the administration of the grant program, (2) payments for an independent audit of the grant program, and (3) disbursements made to subrecipients in support of various law enforcement expenditures.

Personnel and Indirect Costs

MountainTop spent a total of \$9,884 on personnel costs, including indirect costs, for performing grant administration. We found no exceptions with the charging of personnel costs to the grant. However, MountainTop charged an overhead rate of 98 percent and a general and administrative rate of 21 percent to the personnel costs. We reviewed grant records and confirmed with MountainTop that it did not have OJP budget approval to charge any indirect costs to the grant. Therefore, we are questioning \$4,914 of indirect costs charged to the grant. In response, a MountainTop official told us they are now requesting an indirect rate approval from OJP.

Program Specific Audit

OJP required MountainTop to have a program specific audit performed that covered the management of the grant program in conformity with grant requirements (see the Program Specific Audit Report section of this report for details). MountainTop engaged an independent accounting firm and paid a total of \$5,885 for the audit. We reviewed supporting documentation for the \$5,885 and found no exceptions.

Subrecipient Payments

At the time of the audit, MountainTop requested grant funding of \$3,330,669 for subrecipient payments, but had only disbursed funds totaling \$2,280,513 to subrecipients to purchase law enforcement equipment.³ We performed a limited review of the disbursements, made via checks to the subrecipients, and determined the disbursements were properly accounted for and adequately supported by MountainTop financial account activity reports and bank statements.

Monitoring Subrecipients

According to the OJP Financial Guide, as the direct grant recipient, MountainTop was responsible for all aspects of the program including proper accounting and financial recordkeeping of all subrecipient grant funded expenditures. Moreover, MountainTop was required to ensure that subrecipients had a system of internal control in place to safeguard and account for the grant funds. MountainTop was also required to provide

³ MountainTop provided accounting records for the \$2,280,513 dispersed to subrecipients. According to MountainTop personnel, MountainTop was in the process of distributing the remaining \$1,050,156 to subrecipients. Therefore, expenditure documentation was unavailable to review at the time of our audit. Since our audit work, MountainTop has requested all but \$3,885 of the total grant funds, or a total of \$3,450,783.

adequate monitoring to ensure that subrecipients used the grant funds for their intended grant authorized purpose.

Based on our preliminary findings that showed MountainTop failed to adequately monitor the expenditures made by the subrecipients, we visited 27 of the 118 subrecipient locations, or nearly 23 percent of the law enforcement agencies receiving grant funds, to determine the level of monitoring performed by MountainTop. We selected our non-statistical sample of 27 subrecipients based on factors that included amount of grant funds received and location. These site visits were limited to establishing the extent to which MountainTop performed monitoring functions as required by the OJP Financial Guide. Our testing was not intended to examine the expenditures made by each subrecipient and we did not attempt to determine whether grant expenditures were allowable and supportable or whether the subrecipients complied with all of the terms and conditions of the grant. Instead, we examined the potential risks associated with the grant funds to determine whether potential fraud, significant abuse, or wasteful spending of the funds had taken place. Despite not testing the grant funds received and expended by the subrecipients, we found numerous instances during our site visits where subrecipients did not conform to grant requirements. These instances are discussed in greater detail below.

MountainTop's Documentation

We requested and were provided a listing of 118 subrecipients (law enforcement agencies) that received funding and the amount each received. Additionally, MountainTop provided us with a list of subrecipient grant-funded expenditures for which they received supporting documentation from the subrecipients. We found that the documentation maintained and used by MountainTop for the monitoring of subrecipients was inadequate. The documentation did not provide a thorough accounting of the expenditures made by the subrecipients and, in some instances, the documentation reflected only planned purchases to be made by the subrecipients. As a result, we could not test subrecipient transactions based on the documentation maintained by MountainTop.

Financial Operations, Records, Systems, and Procedures

The OJP Financial Guide states that direct recipients should be familiar with, and periodically monitor, their subrecipients' financial operations, records, systems, and procedures. In addition, the accounting systems of all recipients and subrecipients must be designed and must function to ensure

that agency funds are not commingled with funds from other sources and that each federal award is accounted for separately.

During our site visits, we asked subrecipients about monitoring activities MountainTop performed. Subrecipient personnel stated that MountainTop did not evaluate their financial operations, records, systems, or procedures at any juncture. Furthermore, these subrecipients stated that MountainTop did not make any attempt to review or evaluate their accounting practices or accounting system reports prior to distributing grant funds.

We also found that many of the subrecipients' grant-funded transactions were commingled with locally funded transactions, thereby compromising any audit trail of grant funds. In addition, we found instances where subrecipients accounted for grant funds in a manner separate and apart from their own accounting system. In these instances, their accounting consisted merely of a checkbook and bank statements to support the deposit and subsequent disbursement of grant funds received. We found no evidence that MountainTop or any independent auditor reviewed the receipt and disbursement of grant funds or that local agency disbursement processes were followed.

Inventory Controls

The OJP Financial Guide requires property records to be accurately maintained. It also requires a physical inventory of property and the results of that inventory reconciled with property records at least once every two years. In addition, a control system must be in place to ensure adequate safeguards to prevent loss, damage, or theft of the property. We found that MountainTop did not make any attempt to evaluate the subrecipients' property management systems. We also found that many subrecipients had no inventory system. As a result, we are concerned that grant-funded purchases of equipment or property, including firearms, tasers, and ammunition, are not properly safeguarded and accounted for as required by MountainTop's grants.

Timely Expenditures

Pursuant to the OJP Financial Guide, recipients must time their drawdown requests to ensure that federal cash on hand is the minimum needed for disbursements, to be made immediately or within 10 days of the drawdown. In a letter accompanying disbursements made to subrecipients, MountainTop provided guidance, stating "these funds should be expended within 90 working days of receipt." This guidance is not consistent with OJP

policy. Additionally, during our fieldwork we found instances where grant funds remained in subrecipient bank accounts for over a year. This resulted in some subrecipients earning unreported interest on grant funds, also impermissible according to OJP guidance.

Budgeting

The OJP Financial Guide states that grant recipients should ensure that each subrecipient prepares an adequate budget on which its award commitment will be based. The details of each project budget must be maintained on file by the recipient. In addition, federal funds must be used to supplement existing funds for program activities and must not replace funds appropriated for the same purpose. We found that MountainTop did not make any attempt to review or evaluate subrecipient budgets. Although we did not find direct evidence of subrecipients supplanting local funds with grant funds, the risk that supplanting might occur and not be detected was increased by MountainTop's failure to review and evaluate subrecipient budgets.

Other Areas of Concern

Our audit also identified other potential concerns as a result of MountainTop's lack of monitoring. Because MountainTop did not make any attempt to review or evaluate the relationships between subrecipients and their vendors or contractors, conflicts of interest may have existed when subrecipients made purchases. Also, MountainTop failed to ensure equipment and other grant purchases were necessary and in support of legitimate law enforcement needs specific to each local agency. Absent some form of documented need, grant funds have the potential for abuse and wasteful spending by the subrecipient. However, it should be noted that while we did not find any instances of such activities, MountainTop's lack of oversight leaves the potential for fraud and misappropriation of grant funds.

We found several instances where grant funds were not adequately accounted for or reported by the subrecipients. While we did not find any instances where the grant funds were not spent on law enforcement activities, the potential for fraud, abuse, and wasteful spending of grant funds remained significant due to MountainTop's lack of monitoring and oversight. Because MountainTop did not maintain adequate documentation to monitor subrecipient expenditures, did not review the subrecipients' financial operations, records, systems and procedures, and did not evaluate subrecipients' inventory controls or budget, we are questioning all of the funds distributed to subrecipients (all grant funds drawdown minus

personnel costs and independent auditor's costs) for the grant and two supplements, totaling \$3,330,669.

Reports

Financial Status Reports

The financial aspects of OJP grants are monitored through Financial Status Reports (FSR). According to the Office of Justice Programs (OJP) Financial Guide, FSRs should be submitted within 45 days of the end of the most recent quarterly reporting period. Even for periods when there have been no program outlays, a report to that effect must be submitted. Funds or future awards may be withheld if reports are not submitted or are excessively late.

We reviewed each of the 12 FSR's submitted by MountainTop and found the FSRs were generally submitted on time and generally reflected grant activity. However, we found three of the submitted FSRs were late and three contained errors that were later corrected.

Progress Reports

Progress reports are submitted in order to present information on the performance of a grant. MountainTop submitted progress reports to OJP timely every 6 months. In its progress reports, MountainTop reported the amount of funds disbursed to the subrecipients and select testimonial evidence provided by subrecipients regarding the success of the grant program.

Drawdowns

The OJP Financial Guide establishes the methods by which the Department of Justice makes payments to grantees. The methods and procedures for payment are designed to minimize the time elapsed between the transfer of funds by the government and the disbursement of funds by the grantee. Grantees may be paid in advance, provided they maintain procedures to minimize the time elapsing between the transfer of funds by the government and the disbursement of funds by the grantee.

According to a MountainTop official, MountainTop requested drawdowns in advance based on the amount scheduled by the 12th District Office to be distributed to subrecipients. Additionally, in October 2006, MountainTop's independent auditors reported in their Program Specific Audit Report that MountainTop "often kept large balances of federal funds on

hand" and recommended that MountainTop "develop procedures to determine cash needs before drawdowns of federal funds are requested in order to minimize cash on hand and minimize interest earnings." MountainTop began drawing down the correct amount of funds, without excess, and no longer earned interest on grant funds after this issue was brought to management's attention (see Program Income section of this report).

We reviewed the drawdowns for the grant and two supplements and determined each was adequately supported by MountainTop financial account activity reports and bank statements.

Budget Management and Control

The OJP Financial Guide addresses budget control surrounding grantee financial management systems. Grantees are permitted to make changes to their approved budgets to meet unanticipated program requirements. However, certain types of changes to approved budgets require advance written approval from the awarding agency:

- budget revisions that could result in the need for additional funding, and
- cumulative transfers among direct cost categories that exceed or are expected to exceed 10 percent of the total approved budget.

In our view, failure to adequately control grant budgets could lead to the wasteful and inefficient expenditure of government funds.

Upon grant award approval, OJP provides a Financial Clearance Memorandum to grant recipients that state the approved itemized budget for the grant. The Financial Clearance Memoranda for the MountainTop grant and two supplements approved the following budgets.

BUDGET APPROVED BY OJP

COST CATEGORY	ORIGINAL GRANT BUDGET	SUPPLEMENT 1 BUDGET	SUPPLEMENT 2 BUDGET	COMBINED TOTAL BUDGET	ACTUAL EXPENSES⁴
Personnel	\$ 20,000	\$ 40,000	\$ 60,000	\$ 120,000	\$ 9,884
Travel	4,500	5,000	5,000	14,500	0
Equipment	470,239	936,643	1,903,286	3,310,168	3,330,669
Other	0	5,000	5,000	10,000	5,885
TOTAL	\$494,739	\$986,643	\$1,973,286	\$3,454,668	\$3,346,438

Source: Office of Justice Programs

We attempted to compare the OJP-approved budget to the expenditures that MountainTop claimed as related to the grant to determine whether grant funds spent conformed to the approved grant budget. We found that MountainTop did not ensure that grant related expenditures were being spent in accordance with approved grant budget. The grant application stated:

The overarching goal of this grant is to improve the ability of law enforcement agencies in southwestern Pennsylvania to fight crime. Funds from this grant will be used to cover the purchase of protective vests, community police training, communications equipment, and enhancements to communications infrastructure in the multi-jurisdictional areas of four southwestern Pennsylvania counties. This demonstration project is intended to increase the number of rural police agencies that have access to both the training and equipment to help promote officer safety as well as the capacity to fight crime.

Additionally, the approved grant budget worksheet indicated that the grant funds were to be spent on communications and hazardous materials equipment for the municipalities working cooperatively in the project. The cost breakdown of equipment consisted of “protective vests, IT equipment, communication equipment, waterproof cameras, [and] enhanced photography equipment.”

⁴ MountainTop provided accounting records for the \$2,280,513 dispersed to subrecipients. According to MountainTop personnel, MountainTop was in the process of distributing the remaining \$1,050,156 to subrecipients. Therefore, expenditure documentation was unavailable to review at the time of our audit.

During our site visits to the 27 subrecipients, we found grant funds were spent on police vehicles, firearms and tasers, video equipment, bullet proof vests, matching funds for state grants, and computer and communication equipment. In addition, subrecipients spent grant funds on officer training and certifications, uniforms, and other basic supply items. However, we were unable to determine the amount of grant funds used to purchase OJP approved equipment according to the budget because MountainTop did not maintain records that indicated the specific nature of the subrecipients' purchases. Instead, it classified all subrecipient expenditures as equipment purchases.

MountainTop did not ensure subrecipients conformed to the approved budget. Therefore, we question all of the grant funds under the equipment grant budget category for the grant and two supplements, totaling \$3,330,669, because MountainTop failed to adequately manage and control the grant budget.

Program Income

The OJP Financial Guide states recipients and subrecipients shall minimize the time elapsing between the transfer and disbursement of funds. Any income resulting from program operations should be recorded by recipients.

While reviewing bank statements covering the grant period, we found MountainTop earned interest on grant funds. MountainTop had transferred grant funds from its checking account to an interest bearing account. However, this issue was noted in MountainTop's Program Specific Audit, required by OJP, and MountainTop had taken corrective action and returned to OJP interest earned. We found no other evidence of program income during our review and testing.

Program Performance and Accomplishments

According to the award documentation, the purpose of the grant program was to help improve the ability of law enforcement agencies in southwestern Pennsylvania to fight crime. We found that MountainTop did not have a formal method to measure performance of the program. According to the MountainTop Program Manager, MountainTop relied on success stories from the subrecipients to measure performance. The grant application included the following objectives for the original grant:

- Increasing the number of protective vests for police agencies.
- Increasing the access to training programs to law enforcement officers.
- Leveraging the power of the web and computers for better law enforcement.
- Improving command and control on the scene of the emergency.
- Enhancing communications between responding emergency units.
- Increasing cost effectiveness in both operations and maintenance of communications.
- Supporting interoperability between local, state, and federal agencies.

The grant application for Supplements 1 and 2 included the following specific objectives:

- Enhance traffic safety;
- Promote officer safety;
- Improve community safety;
- Increase access to officer training and equipment for officers; and
- Procure office equipment for law enforcement use.

Because MountainTop did not develop any measurable goals or report achievements as related to the goals and objectives for the project, we found that MountainTop did not ensure the goals and objectives of the grant were reached.

Other Reportable Matters

Grant Application

In its grant application, MountainTop stated that grant funds would be issued on a reimbursement basis. Subrecipients were to submit purchase orders or invoices to MountainTop and, if MountainTop determined the purchase order or invoice met the grant criteria and other parameters, MountainTop would then issue a check to the requesting agency. However, inconsistent with the application, MountainTop distributed funds in advance to subrecipients. MountainTop then gave the subrecipients 100 days to provide support for the law enforcement purchases made.

Program Specific Audit Report

According to MountainTop's Award Documentation, OJP required MountainTop to have a financial audit and compliance audit performed by qualified individuals who are organizationally, personally, and externally independent from those who authorized the expenditure of federal funds. This audit was to be performed on a program-wide basis to ascertain the effectiveness of financial management systems and internal procedures that were established to meet the terms and conditions of the award. This audit report was to be submitted no later than 9 months after the close of each fiscal year during the term of the award.

According to the grant requirement, MountainTop's independent auditors should have completed two individual audit reports, one for each fiscal year (FYs 2005 and 2006). However, MountainTop's program specific audit covered two fiscal years, May 1, 2004, through May 31, 2006. Had these audits been completed in a timely manner, the issues regarding the management of the grant, including the earning of interest on grant funds, may have been discovered and remedied earlier in the life of the grant program.

Conclusion

We found that MountainTop was in material non-compliance with grant requirements we tested. We reviewed its compliance with seven essential grant conditions and found material weaknesses in two of the seven areas: (1) monitoring subrecipients and (2) budget management and control. Most significantly, we found that MountainTop inadequately monitored subrecipients that received grant funds. As a result of these deficiencies, we questioned \$3,335,583 in grant expenditures, or about 97 percent of the total grant award.

Recommendations

We recommend that the OJP:

1. Remedy \$4,914 in unapproved indirect costs charged to the grant.
2. Remedy \$3,330,669 in unsupported questioned costs that were expended without adequate monitoring in place to ensure that subrecipients met established financial management guidance.
3. Ensure that MountainTop properly monitors subrecipients in the future.

4. Remedy \$3,330,669 in unallowable questioned costs where MountainTop failed to demonstrate that the approved budget is being met.
5. Ensure MountainTop follows the approved budget.
6. Ensure MountainTop develops grant performance measures and monitors the performance of the grant.
7. Ensure that MountainTop follows the approved grant application.
8. Ensure that MountainTop submits the required program audits.

OBJECTIVES, SCOPE, AND METHODOLOGY

The purpose of this audit was to determine whether reimbursements claimed for costs under the grant were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the grant, and to determine program performance and accomplishments. The objective of our audit was to review performance in the following areas: (1) grant expenditures, including personnel and indirect costs, (2) monitoring subrecipients, (3) financial status and progress reports, (4) drawdowns, (5) budget management and control, (6) matching, (7) property management, (8) program income, (9) program performance and accomplishments, and (10) monitoring of subgrantees. We determined that property management, matching funds, and monitoring of sub-grantee were not applicable to this grant.

We conducted our work according to Generally Accepted Government Auditing Standards with one exception: although we discussed the findings of our audit with MountainTop as our field work progressed and included their comments in the report where applicable, we did not discuss our findings with MountainTop at the conclusion of the audit due to the investigation referral. In our judgment, this departure from Generally Accepted Government Auditing Standards had no adverse effect on the audit results.

Our audit concentrated on, but was not limited to, the award of the grant on September 23, 2004, through September 29, 2007. This was an audit of the BJA Congressionally Mandated Grant No. 2004-DD-BX-1374. MountainTop had a total of \$3,346,438 in drawdowns through November 2007.⁵

We tested compliance with what we consider to be the most important conditions of the grant. Unless otherwise stated in our report, the criteria used for this audit are identified in the *Office of Justice Programs Financial Guide* and the MountainTop award documents.

In conducting our audit, we tested MountainTop's grant activities in the following areas: grant expenditures, monitoring subrecipients, financial status and progress reports, drawdowns, budget management and control, program income, and performance of grant objectives. In addition, we reviewed the internal controls of MountainTop's financial management system specific to the management of DOJ grant funds during the grant period we audited. We also performed limited tests of source documents to

⁵ Through December 22, 2010, MountainTop had drawdown \$3,450,783.

assess the accuracy and completeness of reimbursement requests and financial status reports. However, we did not test internal controls for MountainTop as a whole or those specific to the BJA grant administered by MountainTop; nor did we test the reliability of MountainTop's financial management system as a whole. As part of the grant award, MountainTop had a program specific audit performed by an independent Certified Public Accountant. We reviewed the results of that audit and our discussion can be found under the Other Reportable Matters section of this report on page 15.

SCHEDULE OF DOLLAR-RELATED FINDINGS

<u>QUESTIONED COSTS:</u>	<u>AMOUNT</u>	<u>PAGE</u>
Unapproved Indirect Costs	\$ 4,914	6
Inadequate Subrecipient Monitoring	3,330,669	10
Failure to manage and control the grant budget	3,330,669	13
<i>SUBTOTAL OF QUESTIONED COSTS</i>	\$ 6,666,252	
<i>LESS DUPLICATION⁶</i>	(\$ 3,330,669)	
<i>TOTAL DOLLAR RELATED FINDINGS</i>	\$ 3,335,583	

Questioned Costs are expenditures that do not comply with legal, regulatory or contractual requirements, or are not supported by adequate documentation at the time of the audit, or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, or the provision of supporting documentation.

⁶ We questioned costs related to indirect costs, subrecipient monitoring and budget of direct costs. Some of the questioned costs relate to identical expenditures – though questioned for different reasons – and, as a result, the questioned cost is duplicated. We reduced the amount of costs questioned by the amount of this duplication.

MOUNTAIN TOP TECHNOLOGIES, INC. RESPONSE TO THE DRAFT AUDIT REPORT

MOUNTAIN TOP TECHNOLOGIES, INC. OFFICIAL RESPONSE TO AUDIT REPORT

MountainTop Technologies, Inc. ("MountainTop") by its counsel, Michael W. Sahlaney, states the following official response to the Audit Report prepared by the Office of the Inspector General, Audit Division ("OIG"). As set forth in the Executive Summary of the Audit Report, the audit was prepared for the Office of Justice Programs (OJP) Bureau of Justice Assistance (BJA), in connection with the congressionally mandated grant to MountainTop, designated by grant award 2004-DD-BX-1374, which grant was supplemented in September 2005 and September 2006. The initial and supplemented grants are collectively referred to as the 2004 Grant in this response. The purpose of the grant program was, as stated in the Executive Summary, to help improve the ability of law enforcement agencies in southwestern Pennsylvania to fight crime.

MountainTop's response is primarily directed to the conclusion and recommendations made on Pages 15 and 16 of the Audit Report. For reasons stated herein, MountainTop disputes that it was in material noncompliance with grant requirements, and also addresses certain conclusions stated in the Executive Summary and Introduction. This response further demonstrates that the recommendations set forth in the Audit Report have been anticipated and the remedies already implemented by MountainTop.

Response to Executive Summary and Introduction:

The 2004 Grant was initially awarded May 1, 2004. The Supplements 1 and 2 extended the project through August 31, 2010. As noted in the Audit Report, the field work was completed in 2007. MountainTop subsequently supplemented the field work by providing OIG with all documents relating to the Grant, copied onto nine consecutive CDs.

Notwithstanding the extensive production of documents, MountainTop's administration of the Grant and monitoring of subrecipients continued until the program closed in August 2010. Throughout that time, MountainTop monitored and examined budgets and expenditures of subrecipients, as set forth in detail in the response to recommendation 2 below.

Final Financial and Narrative Reports were filed with OJP and the 2004 grant has been fiscally and programmatically closed.

In addition, MountainTop was authorized to administer an additional OJP Grant, No. 2008-DD-BX-0499. The administration of that grant involved evaluation of grant applications from police departments throughout the 12th Congressional District. It also involved the continued monitoring of the accounting and inventory systems and budgets of police departments who received or applied for grants under the 2008 Grant. The 2008 Grant has since been closed and audit reports submitted, MountainTop's administration of the 2008 Grant were favorably reviewed.

Overview of Grant Application Process:

To ascertain the needs of police departments in the 12th Congressional District, surveys were sent to each police department in the district. Based upon those surveys and the stated needs, grants were awarded. MountainTop did consult with certain staff members from the 12th Congressional District Office because those staff members had unique knowledge of the various police departments throughout the district and the geographic and demographic components that enabled analysis of the most effective use of the grant money. Page 2 of the Audit Report notes that "not all law enforcement agencies in the 12th Congressional District received grant funds." Some departments did not respond to the survey or state any specific need. For that reason, MountainTop obviously did not make grants to those departments.

Page 12 of the Audit Report set forth the grant budgets approved by OJP for the original grant and supplemental grants. These original budgets were amended by a Grant Adjustment Notice ("GAN") approved by OJP on June 3, 2010. See attached Exhibit 1. As set forth in more detail below, the expenditures by MountainTop were consistent with the June 3, 2010 GAN. The 2004 Grant and supplements were closed out with a Federal Financial Report. See Exhibit 2, together with a Final Report Narrative. See Exhibit 3.

The Grant Applications stated "the over-arching goal of this grant is to improve the ability of law enforcement agencies in southwestern Pennsylvania to fight crime. Funds from this grant will be used to cover the purchase of protective vests, community police training, communications equipment and enhancements to communications in infrastructure in the multi-jurisdictional areas of southwestern Pennsylvania counties. This demonstration project is intended to increase the number of rural police agencies that have access to both the training and equipment to help promote officer safety as well as the capacity to fight crime". MountainTop disputes any implication that these program goals were not met by its grants to local police departments. It submitted required interim reports to OJP, including Exhibit 3, reflecting the increased crime-fighting capacity experienced by local departments from the grants.

Page 9 of the Audit Report acknowledges that OIG "did not find any instances where the grant funds were not spent on law enforcement activities." In fact, grant funds were used to enhance technologies, equipment and training necessary to law enforcement in the 12th Congressional District. The balance of this Response establishes that MountainTop took all monitoring and budget management and control required by the Grant Applications.

OIG Recommendation No. 1 –OIG Proposed Remedy \$4,914.00 in unapproved indirect costs charged to the grant.

MountainTop Response: Page 6 of the Audit Report states that "MountainTop charged an overhead rate of 98% and a general and administrative rate of 21% to the personnel costs". OIG questioned the \$4,914.00 of indirect costs charged to the grant.

MountainTop subsequently submitted a request for a GAN, which was approved June 3, 2010, (see Exhibit 1). A copy of MountainTop's actual labor costs, fringe benefits, travel costs

and consulting fees and related administrative expenses is set forth on Exhibit 4. A comparison of the June 3, 2010, GAN reflects that OJP approved expenditures of \$17,646.00 for fringe benefits. This approval was in lieu of the indirect charges by MountainTop to the grant. The actual amount expended by MountainTop was \$17,704.48. The difference is \$58.48. MountainTop maintains that the June 3, 2010, GAN remedies the issue relating to unapproved indirect costs.

Recommendation No. 2—OIG Proposed Remedy \$3,330,669.00 in “Unsupported, questioned costs” that were allegedly expended without adequate monitoring.

MountainTop Response: MountainTop disputes the allegation that the grants were expended without adequate monitoring or that it failed to meet established financial management guidance. MountainTop monitored subrecipients and maintained budget management and control.

It must be noted that the majority of subrecipients were small rural police departments that did not have sophisticated accounting systems. Many of these departments had part-time officers or police chiefs and limited administrative staff. These departments committed their manpower to police work in the field. MountainTop therefore had to instruct and constantly follow-up on the documentation that was required to assure that the grant funds were spent consistently with program objectives and applicable administrative guidelines. MountainTop assigned an individual to work almost full time on this administrative task, with additional staff time committed as needed to supplement the work of the primary administrator.

In response to inquiries made by OIG in 2007, however, MountainTop commenced an extensive re-review of each subrecipient’s documentation of grant expenditures to assure that the costs charged to the grant were allowable and supported. MountainTop further requested documentation to assure that each subrecipient had taken appropriate steps to comply with grant requirements. MountainTop’s representative also conducted follow-up site visits to subrecipients. A copy of the monitoring checklist used at the site visits is attached as Exhibit 5. A copy of the index showing the files stored in connection with grant documentation provided by each subrecipient is attached as Exhibit 6. Please note that Exhibit 6 reflects information that is supplemental to the documentation previously supplied to OIG.

On September 21, 2011, [REDACTED] of OIG advised MountainTop’s counsel that OIG did not wish to have hard copies or electronic copies of the documents on the CD or a copy of the CD at this time. The CD with all documentation is available and is hereby offered in the event that OIG or subsequently, OJP representatives wish to see the files. An illustrative file reflecting the scope of monitoring, however, is provided with documentation obtained from the Upper Yoder Township Police Department documenting expenditures made by it with the grant funds. See Exhibit 7. It should be noted that an extensive additional file of photographs is available with respect to the Upper Yoder Township grant.

In addition to the monitoring, MountainTop specifically addressed concerns relating to the interest earned by subrecipients. Exhibit 8, attached hereto, is the form letter sent by MountainTop to the subrecipients in order to collect information concerning interests. Exhibit 9

is a summary comparing 2004 and 2008 grant recipients. The third column of that exhibit, however, reflects that interest checks were returned by subrecipients for interest earned in excess of \$100.00. MountainTop refunded collected interest repayments as well as interest earned by MountainTop on grant funds to DOJ. See Exhibit 24.

Based upon its review of subrecipient records, MountainTop believed that certain subrecipients might have used grant funds for purposes inconsistent with grant purposes or to supplant general budgeted operating expenses of the subrecipient. Therefore, on August 19, 2008, MountainTop sought clarification and confirmation of the appropriate review and collection actions from [REDACTED] and [REDACTED] of the DOJ. The inquiry was originally made by email and then followed by separate letter dated August 19. See Exhibit 10. A response to both inquiries was made by [REDACTED] by email on September 17. See Exhibit 11.

The response provided by [REDACTED] provided guidance about the analysis of documentation provided by subrecipients. On Page 2 of Exhibit 11, [REDACTED] stated "Assuming, based on the evidence available to the grantee, the subrecipient has deliberately reduced state or local funds because of the available federal funding, then as an alternative to the course suggested in the financial guide...you may wish to consider requiring that the subrecipient return any federal funding that has been used to supplant local or state funds and then submit a new request for reimbursement of allowable equipment expenditures. This will ensure a clearer audit trail of the federal funds and will avoid potential ambiguity regarding its use. If this cannot be accomplished, you propose to have the jurisdiction submit receipts for acceptable equipment and replace the improper expenses with proper expenses; this alternative is accepted (though the previous suggestion is preferred) as long as transparent and thorough records are maintained of the subject transactions. It is also recommended that you increase your monitoring of this subrecipient."

Pursuant to the financial guides and the OMB Circulars A10 and A133, and [REDACTED] suggestions, MountainTop and its legal counsel carefully analyzed subrecipients records to ascertain whether supplanting had occurred. MountainTop authorized its legal counsel to proceed with collection activities to recover funds, where collection was supported by that review, as follows:

1. Without agreeing or admitting that it had used any funds inappropriately, Cresson Borough, Cambria County, refunded \$20,000.00 based upon MountainTop's belief that the subrecipient had used the grant funds to purchase a police vehicle for which Cresson had already budgeted funds from its capital account. This was discovered by a review of applicable Cresson Borough minute books and resolutions. MountainTop alleged that the grant funds were therefore used to supplant general funds. Cresson Borough disputed this allegation, but agreed to settle the matter. The \$20,000.00 was deposited in MountainTop's grant account and awarded to other subrecipients from the grant account. See Exhibit 12.
2. After site visits and repeated reviews of documents, MountainTop found

evidence and asserted that Southwest Regional Police force had used grant funds for purposes that supplanted general fund obligations. MountainTop's investigation included, without limitation, a review of Southwest's equipment, invoices and related financial records and annual budgets. MountainTop determined that the amount supplanted was \$3,884.98. MountainTop recovered that amount from Southwest Regional and refunded the total to OJP. See Exhibit 13.

3. After site visits and repeated reviews of documents, MountainTop found evidence and asserted that Fayette City Police force had used grant funds for purposes that supplanted general fund obligations. MountainTop determined that the amount supplanted was \$6,504.17. Fayette City Borough reimbursed the amount of \$6,504.17 to MountainTop for grant funds that were used to supplant general funds. The said \$6,504.17 was deposited into MountainTop's grant account and awarded to other subrecipients from the grant account. See Exhibit 14.
4. \$15,000.00 was distributed to West Kittanning Borough Police Department. Although portions of Kittanning are in the 12th Congressional District, it was determined that the police department was located in the Borough of West Kittanning, which was outside of the 12th Congressional District. The \$15,000.00 was refunded by the West Kittanning Police Department, and the said amount was returned to OJP. See Exhibit 15. OJP permitted the \$15,000.00 to be withdrawn as part of the 2004 Grant.

As a result of its continued monitoring of and communication with subrecipients, MountainTop determined that certain subrecipients wished to dispose of equipment purchased with grant funds. MountainTop has taken the following actions with respect to such subrecipients:

1. Paint Borough, Somerset County Police Department was dissolving. With permission of the OJP, the equipment having value in excess of \$5,000.00 was inventoried and redistributed to the Somerset County Pennsylvania Sheriff, [REDACTED]. See Exhibit 16.
2. The Seven Springs Borough Police Department has been discontinued and Seven Springs has inquired about how it is to dispose of the police vehicle purchased by it. Although the vehicle was purchased using funds from the 2008 Grant, MountainTop's oversight on this issue reflects that it continues to monitor subrecipient's use of property acquired with grant funds. MountainTop continues to advise Seven Springs that the vehicle can only be disposed of consistent with OMB Circular A-110. See Exhibit 17.

OIG Recommendation No. 4—OIG Proposed Remedy \$3,330,669.00 in allegedly unsupported,

questioned costs where expenditures allegedly failed to meet the approved budget.

MountainTop disputes the contention in the Audit Report that it failed to demonstrate the approved budgets were met. First, the June 3, 2010, GAN authorized allocation of all grants to subrecipients to a category approved under the term "Contractual". The June 3, 2010, GAN thereby explicitly accepted that the expenditures made by MountainTop were approved under an amended budget.

MountainTop's internal historical information concerning the categorization of the grants shows that the grant expenditures made by subrecipients were consistent with the program purposes and grant application. The grant applications each stated that "the over-arching goal of this grant is to improve the ability of law enforcement agencies in southwestern Pennsylvania to fight crime." The applications further stated that "funds from this grant will be used to cover the purchase of protective vests, community police training, communications equipment and enhancements to communications infrastructure in the multi-jurisdictional areas of southwestern Pennsylvania counties. The demonstration project is intended to increase the number of rural police agencies that have access to both the training and equipment (emphasis added), to help promote officer safety, as well as the capacity to fight crime."

Although the grant program was authorized initially in 2004, actual distributions did not commence until the end of 2005. In December 2006, [REDACTED] the grant administrator at the time, specifically advised [REDACTED] of DOJ that MountainTop believed that it could make grants that would assist police departments in purchasing or renovating squad cars.

On December 12, 2006, [REDACTED] addressed an email to [REDACTED] DOJ's grant administrator for the 2004 Grant, stating "they (the police departments) also need equipment such as more effective bullet-proof vests, taser guns, training on how to use these guns, etc. In addition, many need new squad cars equipped with video cameras, laptops, taser guns, etc...so what falls within the definition of "law enforcement technology" and what does not? We want to submit a more detailed budget of how the funds will be spent, but are stuck until we understand the definition."

In a follow-up letter dated December 20, 2006, addressed from [REDACTED] to [REDACTED] [REDACTED] specifically stated "in FY04/05, some agencies used their funds to help procure new squad cars; because we limited the amount of funding to \$15,000.00 per entity, they had to find additional funding for the cars, which they did since the need for new vehicles was so pressing. As an example, the Sheriff's department in Westmoreland County was transporting a convicted murderer from the State prison located in the county to the county courthouse for a hearing; while in route, their squad car with 200,000 miles broke down on the side of the road for several hours, causing a great concern about public safety. Police cars with many miles on them are common in our area, since southwestern Pennsylvania is mostly rural and police departments usually only have a few squad cars to cover large areas."

[REDACTED] then requested that the administrative hold on the 2006 supplement to the FY04/05 grants be lifted. In fact, the hold was lifted in 2006 and funding was authorized with DOJ's knowledge that some grants were being used for vehicle acquisition.

The emails from [REDACTED] to [REDACTED] are set forth in Exhibits 18 and 19.

We also enclose a report provided by [REDACTED] based upon a Bureau of Justice Assistance Seminar in January 2007. See Exhibit 20. [REDACTED] notes, from the seminar, that the Bureau of Justice indicated that it was satisfactory to use Congressionally mandated grants to fund squad cars.

On March 13, 2007, MountainTop submitted an interim Summary of Grant Fund Disbursements to the OJP. See Exhibit 21. The report shows grants used by the subrecipients including Uniontown Police Department, Perryopolis, Ebensburg Borough, Dunbar Borough, Washington Township, and others to purchase police vehicles. Photographs of the police vehicles are contained in the report. It is therefore obvious that MountainTop at no time interpreted the grant application to exclude the use of grant funds for purchase of police vehicles, which were essential to law enforcement in a heavily rural district. DOJ was aware of the purchases and ultimately approved expenditures of grant funds for police vehicles by approving the comprehensive reallocation in the June 3, 2010, GAN.

The audit report questions whether the grant expenditures were, in fact, consistent with the grant purposes. MountainTop tracked the use of grant funds for budget purposes internally. Exhibit 22, attached hereto, shows a breakdown of the use of grant funds for the fiscal year 2004 and 2005 Grants, through October 24, 2007. Exhibit 23 shows the breakdown of grants made under the 2006 supplement. Exhibit 22 and 23 do not show distributions made in 2010. The 2010 grants were made for specific purposes as authorized by the grants, however.

Exhibit 23 sets forth a list, printed on September 22, 2011, evidencing all disbursements made under the grant.

Notwithstanding the 2010 GAN, a review of Exhibits 22 and 23, evidence that grant expenditures by subrecipients were consistent with the budgets at the time. It is not uncommon to retrospectively request amendment of the budgets consistent with reallocations, as occurred in this case.

For the 2004-2005 fiscal years, Page 12 of the Audit Report reflects that \$1,406,882.00 was authorized for equipment expenditures. Exhibit 22 shows that actual equipment expenditures were \$1,540,216.20, including equipment and vehicles. Authorized personnel expenses in the 2004-2005 fiscal years were \$60,000.00. Reported expenditures were actually \$65,181.44 and personnel are included. Costs category for travel was \$9,500.00. No amount was allocated or expended for travel in 2004-2005 cycle.

For 2006, the OJP budget authorized expenditures of \$1,903,286.00 for equipment. Exhibit 23 shows that grants for \$1,744,349.00 were made for vehicles and law enforcement equipment. An additional \$298,514.00 was spent for informational technology. These expenditures were separately listed by MountainTop because invoices reflected that when technologies were purchased, they often came with training, software, maintenance and installation, which was integral to the equipment itself. It was therefore concluded by

MountainTop that a separate line item for information technology would provide better internal information as to the use of grant funds in 2006.

Budgeted personnel expenses for MountainTop in 2006 were \$60,000.00. Actual personnel expenses for personnel were \$553.67.

It should be noted that the spreadsheets for 2004-2005 and 2006 were not final spreadsheets and do not reflect final total distributions after amounts recovered in cases where inappropriate expenditures or supplanting was discovered, as set forth in the preceding section relating to the monitoring. The exhibits are evidence, however, that grant funds were expended consistent with program budgets and purposes.

In preparing this report, MountainTop found, in Exhibit 24, that its books do reflect a \$212.55 difference between the amount that it shows as expended and the amount shown under the DOJ budget authorized under the June 3, 2010, GAN. \$100.00 of this amount is attributable to MountainTop's initial \$100.00 to open a grant fund checking account. MountainTop believes that an amount of \$112.55 may still be owed back to OJP. MountainTop believes this may be a result of an uncleared check, but is unable to document that amount and would be willing to reimburse that amount if OJP determines that reimbursement is appropriate after review of this response.

It is clear that MountainTop's grants to subrecipients, and the expenditure of the grants by subrecipients were consistent with the overall purposes of the grant to improve the ability of law enforcement agencies in southwestern Pennsylvania to fight crime. Exhibits 21-23 demonstrate the uses to which the grants were put. In its monitoring of documents and during its onsite visits, MountainTop found no evidence that funds were misappropriated or in any way used fraudulently. MountainTop found no documentary or onsite evidence of any misappropriation of funds or self-dealing. As set forth in the preceding section relating to monitoring, MountainTop worked with the police departments to advise them of their obligations concerning property management, and the police departments have, when necessary, contacted MountainTop concerning the appropriate procedure to dispose of equipment acquired with grant funds. See Exhibits 16 and 17. In addition to the written responses contained in those exhibits, MountainTop personnel have quickly responded to verbal inquiries to assure that police departments maintain their inventory and equipment control.

Based upon all of the foregoing, MountainTop has supported all expenditures in a manner consistent with the approved budget and has remedied any alleged audit deficiency referred to in OIG Recommendation No. 4.

OIG Recommendations No. 3 and 5-8 – MountainTop has filed its Final Financial Report and Report Narrative (See Exhibit 2 and 3). MountainTop has received notification that the 2004 grant and supplements have been programmatically and fiscally closed. See Exhibit 25. The foregoing sections of this report show that MountainTop followed the approved budget, as amended by the June 3 2010, GAN and that MountainTop demonstrated that grant expenditures met performance standards. The foregoing sections also show that MountainTop monitored the performance grant and either followed or took remedial actions consistent with the grant

application. All program audits have been submitted by MountainTop. For that reason, the recommendations contained in Nos. 3, 5, 6, 7, and 8 of the audit report have been followed and satisfied.

Summary:

MountainTop has taken all actions reasonable or necessary to document that funds granted to subrecipients were consistent with both the program purpose and program budget. In those cases identified by MountainTop where supplanting occurred or expenditures were not consistent with the program purposes or budget, MountainTop recovered the funds from the subrecipients and returned those funds to the OJP or added the returned funds back to the grant account for redistribution. MountainTop maintains that it has remedied any deficiencies alleged by OIG with respect to monitoring, budget controls and general grant administration and has properly accounted for all expenditures of funds.

The most crucial and relevant point is that all of the 2004 grant funds and 2005 and 2006 supplements were used for valid administrative costs and, more importantly, for police technology, equipment, training and vehicles essential to fighting crime in the 12th Congressional District. The funds were used consistent with the grant purposes. By the year 2008, OJP was confident enough of MountainTop's abilities that it authorized MountainTop to administer BGA Grant 2008-DD-BX-0449. That grant was successfully administered, and audit and final narrative report were submitted, and DOJ's administrator, [REDACTED] complimented MountainTop on the quality of the reports submitted. See Exhibit 26.

MountainTop has successfully and appropriately administered the 2004 grant and requests that the final audit report reflect that all recommendations made have been complied with and that the "Dollar related finding" be reduced to \$0.00.

Respectfully submitted,

SAHLANEY & DUDECK LAW OFFICE


Michael W. Sahlaney
Counsel for MountainTop Technologies, Inc.

OFFICE OF JUSTICE PROGRAMS
RESPONSE TO THE DRAFT AUDIT REPORT



U.S. Department of Justice

Office of Justice Programs

Office of Audit, Assessment, and Management

Washington, D.C. 20531

September 21, 2011

MEMORANDUM TO: Thomas O. Puerzer
Regional Audit Manager
Philadelphia Regional Audit Office
Office of the Inspector General

FROM: /s/
Maureen A. Henneberg
Director

SUBJECT: Response to the Draft Audit Report, *Office of Justice Programs, Bureau of Justice Assistance, Congressionally Mandated Grant to MountainTop Technologies, Incorporated, Johnstown, Pennsylvania*

This memorandum is in response to your correspondence, dated August 24, 2011, transmitting the subject draft audit report for MountainTop Technologies, Incorporated (MountainTop). We consider the subject report resolved and request written acceptance of this action from your office.

The report contains eight recommendations and \$3,335,583 in questioned costs. The following is the Office of Justice Programs' (OJP) analysis of the draft audit report recommendations. For ease of review, the recommendations are restated in bold and are followed by our response.

- 1. We recommend that OJP remedy the \$4,914 in unapproved indirect costs charged to the grant.**

We agree with the recommendation. We will coordinate with MountainTop to remedy the \$4,914 in unauthorized indirect costs charged to grant number 2004-DD-BX-1374.

- 2. We recommend that OJP remedy the \$3,330,669 in unsupported questioned costs that were expended without adequate monitoring in place to ensure that subrecipients met established financial management guidance.**

We agree with the recommendation. We will coordinate with MountainTop to remedy the \$3,330,669 in unsupported questioned costs related to inadequate subrecipient monitoring of expenditures. If adequate documentation cannot be provided, we will request that MountainTop return the funds to the DOJ, and submit a revised final Federal Financial Report (FFR) for the grant.

- 3. We recommend that OJP ensure that MountainTop properly monitors subrecipients in the future.**

We agree with the recommendation. We will coordinate with MountainTop to obtain a copy of written policies and procedures, developed and implemented, to ensure that subrecipients are properly monitored.

- 4. We recommend that OJP remedy the \$3,330,669 in unallowable questioned costs where MountainTop failed to demonstrate that the approved budget is being met.**

We agree with the recommendation. We will coordinate with MountainTop to remedy the \$3,330,669 in questioned costs, related to the classification of all subrecipient purchases under the equipment budget category. If adequate documentation cannot be provided, we will request that MountainTop return the funds to the DOJ, and submit a revised final FFR for the grant.

- 5. We recommend that OJP ensure MountainTop follows the approved budget.**

We agree with the recommendation. We will coordinate with MountainTop to obtain a copy of written procedures, developed and implemented, to ensure that the approved budget is followed at all times, and that any changes to the approved budget are authorized by the Federal awarding agency.

- 6. We recommend that OJP ensure MountainTop develops grant performance measures and monitors the performance of the grant.**

We agree with the recommendation. We will coordinate with MountainTop to obtain a copy of written policies and procedures, developed and implemented, to ensure that performance measures are established and that MountainTop monitors the performance of the grant.

7. We recommend that OJP ensure that MountainTop follows the approved grant application.

We agree with the recommendation. We will coordinate with MountainTop to obtain a copy of written policies and procedures, developed and implemented, to ensure that the approved grant application is followed at all times, and that any changes to the grant application are approved by the Federal awarding agency.

8. We recommend that OJP ensure that MountainTop submits the required program audits.

We agree with the recommendation. We will coordinate with MountainTop to obtain a copy of written policies and procedures, developed and implemented, to ensure that the required programs audits are submitted.

We appreciate the opportunity to review and comment on the draft audit report. If you have any questions or require additional information, please contact Jeffery A. Haley, Deputy Director, Audit and Review Division, on (202) 616-2936.

cc: Jeffery A. Haley
Deputy Director, Audit and Review Division
Office of Audit, Assessment, and Management

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OJP Executive Secretariat
Control Number 20111578

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

Analysis of MountainTop Technologies, Inc. and OJP Responses

We provided a copy of our draft report to the Office of Justice Programs (OJP) and MountainTop Technologies, Inc. (MountainTop) for comment. In its response, OJP concurred with our recommendations and discussed the actions it will implement in response to our findings. In responding to our report, MountainTop disagreed with our findings citing actions taken after our audit to correct the deficiencies we found. We recognize that significant oversight and corrective actions were taken after our audit. However, actions taken after our audit do not negate our findings, and we believe that MountainTop should continue to ensure that policies and procedures are in place to properly safeguard any federal funds received in the future.

We reviewed and fully considered the issues raised by MountainTop in its response to our report. After our analysis, we determined that our report was factually accurate and the issues were clearly stated. For each instance where MountainTop states that our report was incorrect, we address in this appendix the specific issue in detail under the specific recommendation to which it pertains.

Summary of Actions Necessary to Close Report

1. **Closed.** Remedy \$4,914 in unapproved indirect costs charged to the grant.

In its response, MountainTop provided as support for these costs a subsequently submitted Grant Adjustment Notice (GAN) and actual costs associated with labor, fringe benefits, travel costs, and consulting fees related to the management of the grants. The GAN was submitted and approved in 2010, 3 years after the obligation of the indirect costs we questioned.

The OJP response agreed with our recommendation and OJP agreed to coordinate with MountainTop to remedy the \$4,914 in unapproved indirect costs. This recommendation is closed based on the approval of the GAN authorizing these costs to the grants.

2. **Closed.** Remedy \$3,330,669 in unsupported questioned costs that were expended without adequate monitoring in place to ensure that subrecipients met established financial management guidance.

In its response, MountainTop disputed the statement that the funds were expended without adequate monitoring in place or that it failed to meet established financial management guidance. MountainTop also stated that, *in response to OIG inquiries*, it commenced an extensive re-review of each grantee's documentation and conducted site visits to monitor the subrecipients. During this re-review, MountainTop found unallowable interest earned by grant recipients, instances where grant funds were used to supplant local funds, and funding that went to a location that did not meet the requirements established by the 2004 grant. When these instances were noted, MountainTop took corrective actions that demonstrated active grant monitoring. MountainTop offered to provide OIG with documentation to substantiate its monitoring activity. Those monitoring activities and their related documentation, however, post-dated the OIG's audit fieldwork and MountainTop's expenditure of \$3,330,669 in grant funds. The fact that MountainTop undertook actions to monitor its subrecipients *after* the OIG audit does not negate our finding that MountainTop failed to monitor its subrecipients in a timely and adequate fashion. MountainTop can present its documentation concerning its subsequent monitoring activity to OJP for OJP's consideration of MountainTop's present suitability to receive grant funds.

The OJP response agreed with our recommendation. This recommendation is closed based on the documentation provided that demonstrates the grant monitoring activities performed by MountainTop.

3. **Resolved.** Ensure that MountainTop properly monitors subrecipients in the future.

In its response, MountainTop stated that they monitored subrecipients and either followed or took remedial action consistent with the grant application as needed. Based on our audit fieldwork and review of MountainTop's response, we found that these actions were performed as a reaction to our audit. Additionally, MountainTop's response did not contain written policies or procedures implemented to ensure that subrecipients are properly monitored in the future.

In its response, OJP concurred with our recommendation. This recommendation is resolved based on OJP's concurrence and agreement to coordinate with MountainTop to obtain a copy of written policies and procedures, developed and implemented, to ensure that subrecipients are properly monitored. This recommendation can be closed when we receive documentation demonstrating that MountainTop has developed and implemented the required procedures.

4. **Closed.** Remedy \$3,330,669 in unallowable questioned costs where MountainTop failed to demonstrate that the approved budget is being met.

In its response, MountainTop disputed the finding that it failed to demonstrate that it met the approved budgets. MountainTop stated that the June 3, 2010, GAN authorized allocation of all grants to subrecipients under the "Contractual" category. They concluded that the June 3, 2010, GAN thereby explicitly accepted that the expenditures made by MountainTop were approved under the amended budget. As noted in the report, at the time of our fieldwork we were unable to determine the amount of grant funds used to purchase OJP approved equipment because MountainTop did not maintain records that indicated the specific nature of the subrecipients' purchases. Instead, it classified all subrecipient expenditures as equipment purchases. As the GAN is dated after the project end date and because at the time of our fieldwork we found that MountainTop could not demonstrate that the grant budget was being followed, our finding is not negated.

The OJP response agreed with our recommendation. This recommendation is closed based on OJP's approval of the GAN and MountainTop's actions demonstrating that subrecipient spending conformed to the approved budget.

5. **Closed.** Ensure MountainTop follows the approved budget.

In its response, MountainTop stated that it followed the approved budget, as amended by the June 3, 2010, GAN. In OJP's response, OJP concurred with our recommendation and agreed to coordinate with MountainTop to obtain a copy of written procedures, developed and implemented, to ensure that the approved budget is allowed at all times, and that any changes to the approved budget are authorized by the awarding agency.

This recommendation is closed given that an amended budget was approved and MountainTop has demonstrated that it met the budget.

6. **Resolved.** Ensure MountainTop develops grant performance measures and monitors the performance of the grant.

In its response, MountainTop disputed any implication that the program goals were not met by its grants and also provided documentation regarding oversight and interactions with the subrecipients that largely took place after our audit. However, MountainTop's response did not include specific performance measures that could be used to assess the

grant's results. Their performance measures consisted primarily of testimonial statements from subrecipients with no auditable results.

The OJP response agreed with our recommendation. This recommendation is resolved based on OJP's concurrence and agreement to coordinate with MountainTop to obtain a copy of the written policies and procedures, developed and implemented, to ensure that performance measures are established and that MountainTop monitors the performance of the grant. This recommendation can be closed when we receive documentation demonstrating that MountainTop has developed and implemented performance measures and procedures for monitoring grant performance.

7. **Resolved.** Ensure that MountainTop follows the approved grant application.

In its response, MountainTop disagreed with this finding stating that they either followed or took remedial actions consistent with the grant application. The documentation provided regarding the responses to grant management and budget control were referred to in the disagreement with this recommendation. We note, however, that these actions occurred largely after our audit, including the approval of the GAN 3 years after our audit's fieldwork. As the grant application was the basis for the grant award, significant deviations from the application should be approved in a timely fashion.

In its response, OJP agreed with our recommendation and stated that OJP will coordinate with MountainTop to obtain a copy of written policies and procedures, developed and implemented, to ensure that the approved grant application is followed at all times, and that any changes to the grant application are approved by the Federal awarding agency. This recommendation can be closed when we receive documentation that MountainTop has developed and implemented the written procedures to ensure the grant application is followed and any changes are approved.

8. **Resolved.** Ensure that MountainTop submits the required program audits.

In its response, MountainTop stated that all program audits have been submitted, including a final Federal Financial Report and a Final Report Narrative. MountainTop submitted these reports after we performed our audit work. As of this date, however, OJP has not completed a full closeout of the grant.

In its response, OJP agreed with our recommendation. This recommendation can be closed when we receive documentation demonstrating that MountainTop has submitted the required documentation and OJP closes the grant.