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OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES
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JUL 10 2007

Report Number: A-03-04-00515

Ms. Sherry Kidd
President, DRN Board of Directors
1414 N Cameron Street, Suite C
Harrisburg, Pennsylvania 17103

Dear Ms. Kidd:

Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Pennsylvania Protection & Advocacy, Inc. Procurement Practices and Potential Conflicts of Interest During Fiscal Years 2001 Through 2003." A copy of this report will be forwarded to the HHS action officials noted below for review and any action deemed necessary.

The HHS action officials will make final determination as to actions taken on all matters reported. We request that you respond to the HHS action officials within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), OIG reports issued to the Department's grantees and contractors are made available to the public to the extent the information is not subject to exemptions in the Act that the Department chooses to exercise (see 45 CFR part 5).

Please refer to report number A-03-04-00515 in all correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Virbitsky", with a long horizontal line extending to the right.

Stephen Virbitsky
Regional Inspector General
for Audit Services

Enclosure - as stated

Direct Reply to HHS Action Officials:

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Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**PENNSYLVANIA PROTECTION &
ADVOCACY, INC. PROCUREMENT
PRACTICES AND POTENTIAL
CONFLICTS OF INTEREST
DURING FISCAL YEARS
2001 THROUGH 2003**



Daniel R. Levinson
Inspector General

July 2007
A-03-04-00515

Office of Inspector General

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OAS FINDINGS AND OPINIONS

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.



EXECUTIVE SUMMARY

BACKGROUND

We performed this review at the request of the Administration for Children and Families (ACF) and Substance Abuse and Mental Health Services Administration (SAMHSA) within the Department of Health and Human Services (HHS). The purpose of the review was to assess procurement practices and potential conflicts of interest at Pennsylvania Protection & Advocacy, Inc. (PP&A), and to evaluate the organization's financial management controls over its contractors.

PP&A, established in 1977, is a private nonprofit corporation that provides protection and advocacy services to people with disabilities. The mission of PP&A is to assist eligible persons with disabilities to obtain the rights and benefits to which they are entitled.

OBJECTIVES

The objectives of the review were to:

- assess procurement practices,
- assess potential conflicts of interest regarding the executive director's continuing relationship with a contractor, and
- evaluate PP&A's monitoring of its contractors.

SUMMARY OF FINDINGS

PP&A's contracting practices did not reflect the use of open competition as required by Federal law. Instead, PP&A awarded legal services contracts to the same two law centers without using a bidding process and open competition. Also, there were two situations involving conflicts of interest in violation of Federal law. Such conflicts of interest, real or apparent, could hinder PP&A's ability to act or appear to act in an objective and independent manner in order to ensure that its Federal grant monies were spent in accordance with Federal cost principles.

In addition, contrary to contract provisions, PP&A's legal services contractors billed their services each month based on 1/12th of the approved budget amount instead of the actual incurred costs. These problems occurred because PP&A failed to comply with Federal regulations and did not verify that costs billed were allowable, allocable, and reasonable.

Procurement Practices Did Not Reflect the Use of Open Competition

Contrary to Federal requirements, PP&A awarded legal services contracts to two law centers without a bidding process and open competition. Specifically, PP&A selected the Disabilities Law Project (DLP) and the Education Law Center to provide legal services without solicitation and open competition for over the past 20 years.

Relationships with Contractor Posed Conflicts or the Appearance of Conflicts of Interest

The following relationships involving PP&A's management posed conflicts of interest that call into question the organization's ability to either act or appear to act in an objective and independent manner.

- PP&A's current executive director was the founder and former principal officer of DLP, one of PP&A's legal services contractors. However, the executive director did not terminate her employment relationship with DLP after accepting the executive director position at PP&A in June 2003. Instead, she arranged a leave of absence status with DLP, and continued to serve PP&A while its board of directors awarded annual contracts to DLP. PP&A's fiscal year (FY) 2003 contract to DLP, totaling \$252,000, was signed by PP&A's executive director on her first official day as executive director of PP&A.
- PP&A accepted \$200,000 in contributions from its largest contractor, DLP.

Pennsylvania Protection & Advocacy, Inc. Did Not Adequately Monitor Its Contractors

PP&A did not adequately monitor its contractors' financial management systems to ensure that its contractors recorded expenses properly and verify that billed services were based on actual costs incurred that were allowable, allocable, and reasonable.

RECOMMENDATIONS

We recommend that PP&A:

- use open competition to the maximum extent practical in procuring legal services contracts, and document the limited availability of applicants and the process followed to determine the selection of contractors or, alternatively, stop sole source contracting and establish in-house legal services expertise;
- require its executive director to terminate her conflicting employment relationship with DLP;
- decline acceptance of future contributions from any of its contractors; and
- enforce contract requirements to ensure legal services contractors fully comply with Federal regulations, bill their services based on incurred costs, and verify that actual costs billed are allowable, allocable, and reasonable.

DISABILITY RIGHTS NETWORK OF PENNSYLVANIA COMMENTS

In its comments to our draft report, Disability Rights Network of Pennsylvania (DRN), the successor to PP&A, concurred with all of our recommendations, but respectfully disagreed with our second and third findings. We continue to believe that our findings are correct. DRN's comments are included in their entirety in the appendix.

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INTRODUCTION

BACKGROUND

We performed this review at the request of the Administration for Children and Families (ACF) and Substance Abuse and Mental Health Services Administration (SAMHSA) within the Department of Health and Human Services (HHS). The purpose of the review was to assess procurement practices and potential conflicts of interest at Pennsylvania Protection & Advocacy, Inc. (PP&A), and to evaluate the organization's financial management controls over its contractors.

PP&A, established in 1977, is a private nonprofit corporation that provides protection and advocacy services to people with disabilities. The mission of PP&A is to assist eligible persons with disabilities to obtain the rights and benefits to which they are entitled.

During fiscal years (FY) 2001 through 2003, PP&A received a total of \$10,808,667 in Federal grants from the following three funding sources.

- HHS provided \$7,681,870, or 71 percent. Of this amount, \$4,130,041 was from ACF's Protection and Advocacy for Persons with Developmental Disabilities program; \$3,514,872 was from SAMHSA's Protection and Advocacy for Individuals with Mental Illness program; and \$36,957 was from the Health Resources and Services Administration's Traumatic Brain Injury State Demonstration program.
- Department of Education provided \$1,920,675, or 18 percent in two grants. One grant provided funding for protection and advocacy for the rights of eligible individuals with disabilities. The other provided funding for assistive technology services.
- Social Security Administration provided \$1,206,122, or 11 percent in two grants. One grant provided funding for employment related services to disabled beneficiaries. The other provided funding to disseminate information to disabled beneficiaries about work incentive programs.

PP&A contracted \$5,070,643 or about 47 percent of the total Federal grant funds to other nonprofit organizations that engaged in similar missions.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objectives of the review were to:

- assess procurement practices,
- assess potential conflicts of interest regarding the executive director’s continuing relationship with a contractor, and
- evaluate PP&A’s financial management controls over its contractors.

Scope

Our review included FYs 2001 through 2003 (October 1, 2000, through September 30, 2003), during which PP&A received \$10,808,667 in Federal funding. Our review was more limited than that which would be necessary to express an opinion on the adequacy of PP&A’s operations taken as a whole. Furthermore, we did not review, nor do we express an opinion on, the adequacy of the services provided by PP&A nor that of any of PP&A’s contractors.

PP&A contracted out a significant portion of its Federal funding to two law centers. Our review included the \$3,218,209 received from PP&A by the Disabilities Law Project (DLP) and the \$1,511,074 received from PP&A by the Education Law Center (ELC) during the review period.

We conducted our fieldwork at the PP&A offices in Harrisburg, Pennsylvania, and the DLP and ELC offices in Philadelphia, Pennsylvania.

Methodology

To accomplish our objective, we:

- Obtained an understanding of PP&A’s procurement practices, accounting and financial management controls, and conflict of interest policies;
- Interviewed program officials from ACF and SAMHSA and obtained relevant documents from them;
- Reviewed applicable Federal laws and regulations including:
 - 45 CFR part 74;
 - 42 CFR part 51;
 - Office of Management and Budget (OMB) Circular A-122, “Cost Principles for Nonprofit Organizations;” and
 - terms and conditions of grants, and contract agreements;
- Interviewed the executive director and other officials at PP&A;

- Reviewed board minutes, bylaws, personnel policies and PP&A and DLP health insurance policies;
- Evaluated the executive director's continued relationship with a PP&A contractor;
- Reviewed PP&A's audited financial statements, general ledger, trial balance and financial status reports; and
- Visited DLP and ELC offices and reviewed audited financial statements, general ledger and budget proposals. We also reviewed the two contractors' procurement policies and practices, board minutes, bylaws and personnel policies.

Our review was conducted in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

PP&A's contracting practices did not reflect the use of open competition as required by Federal law. Instead, PP&A awarded legal services contracts to the same two law centers for over 20 years without using a bidding process and open competition. Also, there were two situations involving conflicts of interest in violation of Federal law. Such conflicts of interest, real or apparent, could hinder PP&A's ability to act or appear to act in an objective and independent manner in order to ensure that their Federal grant monies were spent in accordance with Federal cost principles.

In addition, contrary to contract provisions, PP&A's legal services contractors billed their services each month based on 1/12th of the approved budget amount instead of the actual incurred costs. These problems occurred because PP&A failed to comply with Federal regulations for procuring contract services and avoiding conflicts of interest, and did not verify that actual costs billed were allowable, allocable, and reasonable.

PROCUREMENT PRACTICES DID NOT REFLECT OPEN COMPETITION

PP&A awarded sole source contracts to two law centers without using a bidding process and open competition. PP&A selected DLP and ELC to provide legal services without solicitation of bids and open competition. Sole source contracting discourages other law firms from competing for PP&A business. The lack of a bidding process diminishes PP&A's opportunity to identify the best vendor or get the best possible prices for quality services. Because it did not follow Federal regulations for procuring contract services, PP&A might not have received the best price for quality legal services.

Federal Requirements and Grantee's Procurement Policy

Recipients of Federal funds are required to follow Federal regulations and their own procurement policies in administering Federal awards. Open and competitive bidding is critical to ensure that

Federal monies are spent efficiently and effectively. Federal regulations state, “All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition...” (45 CFR § 74.43). The regulations further state, “...the recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade....”

PP&A’s own procurement policy prohibits no-bid contracts. It states that PP&A will provide for full and open competition and will make awards to the bidder or offeror whose bid or offer is responsive to the solicitation and is the most advantageous to PP&A, price, quality and other factors considered. Regardless of whether PP&A failed to follow its own policy, it failed to obey Federal requirements.

Grantee Did Not Practice Open Competition for Awarding Contracts

During our audit period, PP&A contracted exclusively with two nonprofit law centers, DLP and ELC, to provide legal advocacy services. During the past 20 years, PP&A did not engage in open bidding or solicit new providers for these legal services. Therefore, PP&A did not purchase these legal services through competitive means in violation of Federal regulations, which provides for full and open competition. PP&A provided written justification for its sole source contracting practice during our review. However, the justification did not address why PP&A did not follow Federal regulations to provide for open and free competition. There was no indication that PP&A advised ACF or SAMHSA of its intention to use services contracts awarded without full and open competition. Furthermore, we believe it is immaterial whether the contracts with the two law centers were for legal services to PP&A itself or for the execution of PP&A’s statutory legal and advocacy services to its client populations. In either case, the award of the contracts appears to violate Federal requirements with respect to open procurement practices.

Grantee May Not Have Received the Best Price for Quality Services

Open and competitive bidding is critical to ensure that PP&A receives the best price for quality services for persons it represents with mental illness and developmental disabilities. Sole source contracting eliminates competition and restrains trade and, as a result, discourages other law firms from competing for PP&A business. The lack of a bidding process diminishes PP&A’s opportunity to identify the best vendor or get the best possible prices for quality services.

RELATIONSHIPS WITH CONTRACTOR POSED CONFLICTS OR THE APPEARANCE OF CONFLICTS OF INTEREST

The following relationships involving PP&A’s management constitute conflicts of interest that call into question the organization’s ability to either act or appear to act in an objective and independent manner. Specifically, we noted that: (a) PP&A’s current executive director did not terminate her employment relationship with DLP, continued her health insurance coverage with DLP and signed a FY 2003 contract from PP&A to DLP for \$252,000 without competition and (b) PP&A accepted \$200,000 in contributions from its largest contractor, DLP. In doing so, PP&A failed to comply with Federal regulations regarding conflicts of interest.

Federal Requirements and Grantee's Conflict of Interest Policy

In general, a conflict of interest exists when someone in a position of trust has competing professional or personal interests that would either make it difficult to fulfill his or her duties fairly, or would create an appearance of impropriety that could undermine public confidence. Recipients of Federal funds are required to follow Federal regulations regarding conflicts of interest.

Federal requirements applicable to PP&A include the following:

- “Codes of Conduct,” (45 CFR § 74.42) states in part, “No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value.”
- “Competition,” (45 CFR § 74.43) states, “The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade.”
- “Conflict of Interest,” (42 CFR § 51.26) states, “The P&A system must develop appropriate policies and procedures to avoid actual or apparent conflict of interest involving clients, employees, contractors and subcontractors, and members of the governing authority and advisory council . . .”
- OMB Circular A-122 Attachment A Section (A)(3)(b)-(c) states that, to determine whether cost is reasonable, one must look at “...such factors as generally accepted sound business practices, arms length bargaining . . .” and “[w]hether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.”

PP&A's conflict of interest policy in effect for the first 2 years of our audit was dated September 16, 1995, and stated that if a board member believes that he or she has a conflict of interest with regard to any affairs of the board, the board member must declare the conflict and abstain from participating in business related to the conflict of interest. PP&A amended its policy on September 27, 2002, at the end of the second year covered by our audit, to specify the situations that create an actual or potential conflict of interest, as follows:

- an officer or director serves as an officer, director or key employee of an organization that competes with or does business with the corporation; or

- an officer or director has an ownership or investment interest in or compensation relationship with an organization with which the corporation does or proposes to do business or an organization that competes with the corporation; or
- an officer or director receives remuneration for performing services for the corporation and the corporation is determining his or her remuneration.

The amendment further strengthened the language in the policy by stating that the director who may have a conflict of interest shall recuse himself or herself from voting on the subject and shall leave the room while the matter is discussed. Recusing himself or herself shall not prevent a director from participating in other activities or discussions where no conflict of interest exists.

Conflicts of Interest

Grantee's Executive Director Did Not Sever Her Relationship With Disabilities Law Project

PP&A's board of directors hired the current executive director in June 2003 on an interim basis. Prior to PP&A employment, the executive director was a key employee of DLP, the largest contractor of PP&A. This executive director founded DLP in 1977, and served as its executive director for over 25 years until June 2003. DLP has been PP&A's major legal services contractor for over 20 years and received approximately 90 percent of its annual revenue from PP&A for the last 3 years.

At the time of our audit, the PP&A executive director was on a leave of absence status as a staff attorney from DLP. It is our understanding that DLP kept her on leave status instead of ending the employment relationship so that she could maintain her DLP health insurance benefits. But, the regulations do not provide for such an exception to the conflict of interest prohibition. A letter dated July 2, 2003, and signed by the current executive director of DLP stated that: "The leave of absence runs from June 7, 2003 through no later than June 6, 2005. Please contact me in the event that you wish to return to DLP prior to June 6, 2005."

By being on a leave of absence with the ability to return to DLP prior to the end of her employment commitment with PP&A, the PP&A executive director did not sever her employment relationship with DLP, an organization which received more than 90 percent of its funding from PP&A. Thereby, the executive director retained a conflicting interest in the continued existence and prosperity of the contractor. We found no indication that the executive director recused herself from administering or monitoring the DLP contract. In fact, DLP received a developmental disabilities contract for FY 2003 totaling \$252,000 from PP&A that was signed by the PP&A executive director on her first official day as executive director of PP&A. The PP&A board of directors had authorized a DLP contract earlier, but it was never executed until the executive director signed a noncompetitive contract with DLP 8 months after the start of the contract year.

The executive director cannot be presumed to maintain her objectivity when she has an interest in the continued existence and well being of the organization with whom her organization is

contracting. Clearly, the executive director felt that she could only maintain an acceptable level of health benefits by retaining the policy offered by DLP, her former employer. It is likely that, if PP&A had not awarded DLP the FY 2003 legal services contract, which allegedly made up over 90 percent of DLP's funding, DLP would have ceased functioning, and the executive director would have lost her insurance. Additionally, because she maintained a significant interest in DLP's continued operation, the executive director would have had little incentive to diligently monitor the contract with DLP to ensure that PP&A was obtaining the full benefit. The executive director stood to lose an essential benefit if DLP ceased to function, so it is hard to see how no actual or apparent conflict existed when she signed and administered the DLP contract. Her failure to resign completely from DLP violated 45 CFR § 74.42.

PP&A's outside legal counsel provided a written opinion on September 2, 2003, on the question of whether PP&A could contract with an organization in which its executive director or board members have a relationship. The counsel's opinion correctly noted and warned PP&A that:

- There is clearly an appearance of self-dealing particularly where noncompetitive contracts were awarded.
- It is impossible for the executive director of PP&A or its board members to objectively monitor the contractor's work because PP&A would be, in essence, monitoring itself. Clearly this is not the monitoring procedure intended by the regulations.

In December 2003, after the end of the audit period under review, PP&A's board of directors adopted a new conflict of interest policy that accorded with the advice of PP&A's outside legal counsel's interpretation of Federal conflict of interest requirements. However, we found no indication that PP&A cancelled or disallowed the award it made to DLP.

Grantee Accepted Contributions From its Largest Contractor, the Disabilities Law Project

Federal rules prohibit a grantee from accepting contributions from contractors. Specifically, 45 CFR § 74.42 states that, "The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements." A contribution of \$200,000 is something of monetary value and should not have been accepted by PP&A. Indeed, the acceptance of the gift was inconsistent with Federal regulations. PP&A received unrestricted contributions from DLP in the form of two payments, \$140,000 on March 29, 2002, and \$60,000 on September 17, 2002, designated for PP&A's use in FY 2003.

According to PP&A's current executive director, who was DLP's executive director when the contributions were made, the purpose of the contributions was to help PP&A overcome budget and cash flow problems. Regardless of the source or purpose of DLP's contribution, acceptance of the gift by PP&A clearly violated Federal regulation 45 CFR § 74.42, which prohibits PP&A from accepting anything of monetary value from its contractors. PP&A's executive director suggested that DLP's contribution to PP&A does not violate 45 CFR § 74.42 because it is a transaction between "corporations" rather than between individuals. We believe this argument is unpersuasive because an officer, employee, or agent of PP&A must have accepted the

contribution on PP&A's behalf. And a gift of this magnitude would create, at the very least, the appearance of a conflict of interest, which violates 45 CFR § 74.42.

We believe that each of the two aforementioned situations posed a conflict of interest prohibited by Federal regulations. These conflicts occurred because PP&A disregarded Federal regulations regarding conflicts of interest. Those conflicts of interest call into question PP&A's ability to either act or appear to act in an objective and independent manner. Furthermore, the ongoing nature of the conflicts calls into question PP&A's ability to comply with Federal rules and the responsibilities required of being a Federal grantee.

ADEQUATE MONITORING OF CONTRACTORS WAS LACKING

PP&A did not adequately monitor its two legal service contractors, DLP and ELC. Because PP&A did not follow Federal regulations and policy, and did not adequately enforce its own contract provisions, the contractors billed their services based on the approved budget instead of actual costs incurred. As a result, we could not verify that costs billed were allowable, allocable, and reasonable.

Federal Requirements and Grantee's Provisions for Monitoring Subrecipients

- "Monitoring and Reporting Program Performance" (45 CFR § 74.51), states, "Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award."
- OMB Circular A-122, 3.b, states that Federal cost principles are applicable to subawards, subcontracts and subgrants to a nonprofit organization.
- OMB Circular A-122, Attachment A, 2.g, states that for a cost to be allowable under an award, among other things, a cost must be adequately documented.
- PP&A's legal services contract provisions require contractors to bill their services based on actual costs incurred. For each month, contractors must submit reports to PP&A on the actual personnel and non-personnel costs incurred by the grant.

Grantee Did Not Require Its Two Legal Services Contractors to Bill Allowable, Allocable, and Reasonable Costs Incurred

PP&A did not have adequate monitoring controls in place. PP&A did not ensure that its legal services contractors adhered to Federal regulations and contract requirements. The contractors billed and were paid by PP&A each month based on 1/12th of the approved budget rather than actual costs incurred because the contractors, according to PP&A, incurred program expenses significantly higher than the budgeted amounts they received in payment from PP&A.

Furthermore, PP&A did not adequately enforce Federal regulations and contract provisions to ensure that DLP and ELC fully complied with requirements to bill actual costs that were reasonable, allocable, and allowable during any of the 3 years that we audited.

Use of Federal Funds Could Not be Determined

PP&A is responsible for ensuring the Federal funds are spent appropriately, and part of that responsibility involves determining what costs are reasonable. PP&A, though, reimbursed its contractors regardless of the reasonableness of the expenses and regardless of their fiscal responsibilities as required by OMB Circular A-122. By not making their contractors responsible and in compliance with Federal law and cost principles, PP&A itself failed to comply with the cost principles. While PP&A said it changed the billing process after our audit period to reflect actual incurred expenses, we could not determine whether costs claimed were allowable, allocable, and reasonable and whether Federal funds were used for their intended purposes and furthered the objectives of the program.

RECOMMENDATIONS

We recommend that PP&A:

- use open competition to the maximum extent practical in procuring legal services contracts, and document the limited availability of applicants and the process followed to determine the selection of contractors or, alternatively, stop sole source contracting and establish in-house legal services expertise;
- require its executive director to terminate her conflicting employment relationship with DLP;
- decline acceptance of future contributions from any of its contractors; and
- enforce contract requirements to ensure legal services contractors fully comply with Federal regulations, bill their services based on incurred costs, and verify that actual costs billed are allowable, allocable, and reasonable.

DISABILITY RIGHTS NETWORK OF PENNSYLVANIA COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In its comments to our draft report, Disability Rights Network of Pennsylvania (DRN), the successor to PP&A, concurred with all of our recommendations, but respectfully disagreed with our second and third findings. DRN's comments are included in their entirety in the appendix.

DRN disagreed with our second finding that PP&A's executive director had a conflict of interest as a matter of fact or law when she signed a contract with DLP that was authorized by PP&A's board of directors. Nevertheless, the executive director said she eliminated this issue on September 1, 2006, when she completely terminated her employment relationship with DLP and ceased to be covered through DLP's health insurance policy. We continue to believe that the executive director's failure to resign completely from DLP during the audit period violated the Federal conflict of interest rules.

DRN disagreed with our third finding that it violated Federal conflict of interest rules when PP&A accepted the \$200,000 contribution from DLP. DRN agreed not to accept any future contributions from contractors. DRN said that it is impossible for it to repay DLP the \$200,000 since any obligation of PP&A to DLP and any right of DLP to receive payment have been merged and completely offset in DRN, which is the successor company to the merger of PP&A and DLP. Accordingly, we modified our third recommendation. However, we continue to believe that PP&A's acceptance of the contribution during the audit period was a clear violation of the Federal conflict of interest rules.

APPENDIX

Disability Rights Network of Pennsylvania

A merger of PP&A and the
Disabilities Law Project

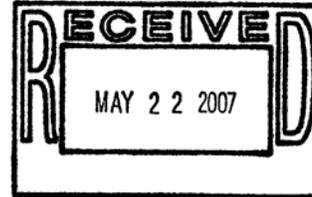
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May 21, 2007

Stephen Virbitsky
Regional Inspector General for Audit Services
Department of Health and Human Services
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150 S. Independence Mall West, Suite 316
Philadelphia, PA 19106-3499



Re: *Report Number A-03-04-00515*

***Response to Draft Report on PP&A Procurement Practices and Potential
Conflicts of Interest During Fiscal Years 2001 Through 2003***

Dear Mr. Virbitsky:

On behalf of the Disability Rights Network of Pennsylvania (DRN), the successor to Pennsylvania Protection & Advocacy, Inc. (PP&A), I am submitting this Response to the Office of Inspector General's Draft Report on PP&A's Procurement Practices and Potential Conflicts of Interest During Fiscal Years 2001 Through 2003. This Response includes (1) an update on changes to our organization since the review that address many of your Office's concerns, and (2) DRN's specific responses to your Office's four recommendations. Please note that this Response, including any concurrence with recommendations in the Draft Report, is not and should not be construed to be an admission by DRN of any misconduct or liability.

Initially, it is important to note that many changes have taken place in our organization since your staff conducted its field review in December 2003.

- ▶ Immediately after the exit interview, DRN directed its legal subcontractors, the Disabilities Law Project (DLP) and the Education Law Center (ELC), to implement a monthly billing system that accurately reflected the actual expenditures based on daily records of work conducted, rather than simply billing one-twelfth of

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their grant amounts from DRN. DLP and ELC implemented this expense-based billing system in March 2004 and October 2005, respectively.

- ▶ Effective September 1, 2006, shortly after receiving your Discussion Draft Report, DRN's Chief Executive Officer, Ilene W. Shane, terminated any continuing employment relationship with DLP and ceased to be covered through DLP's health insurance policy.
- ▶ Shortly after receipt of your Discussion Draft Report, DRN decided to provide legal advocacy services directly rather than through subcontracts with DLP and ELC. To implement this policy, DLP merged into PP&A, effective February 1, 2007, at which time PP&A changed its corporate name to the Disability Rights Network of Pennsylvania. DLP, therefore, no longer exists as a corporate entity, and all legal advocacy services which it had provided are now provided directly by DRN. Effective July 1, 2007, DRN will begin to provide legal advocacy around educational issues that currently are provided by ELC. DRN anticipates that it will continue to contract with ELC to provide some legal back-up services, although the dollar amount involved will be significantly less than it has been in the past.

The Draft Report makes four specific recommendations. DRN responds to each of those recommendations as follows:

- ▶ *Use Competition to Secure Legal Services or Establish In-House Legal Services Expertise* – DRN concurs with the recommendation. As described above, DRN has ceased to contract for legal advocacy services with DLP and, instead, now directly provides the legal advocacy services DLP formally provided. Most of the education legal advocacy services currently provided under contract with ELC will be provided directly by DRN effective July 1, 2007. Any future contracts for legal services will comply with open competition requirements to the maximum extent practicable consistent with federal procurement law, including but not limited to, the requirements contained in 45 C.F.R. §74.43, OMB Circular A-110, and 41 U.S.C. §403(11) (pertaining to the simplified acquisition threshold).
- ▶ *Require Executive Director to Terminate Employment Relationship with DLP* -- DRN respectfully disagrees with your determination that Ms. Shane had a conflict of interest as a matter of fact or law when she signed a contract with DLP that was authorized by the DRN Board -- at a higher amount -- nine months prior to the date when she became the Executive Director (now CEO) simply because she maintained a *de minimis* continuing relationship with DLP for the sole purpose of maintaining critical health care coverage. Ms Shane has acted to eliminate this issue. As

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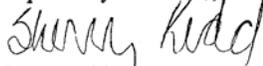
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described above, Ms. Shane completely terminated her relationship with DLP and ceased to receive health insurance through DLP effective September 1, 2006, a short time after receipt of the Discussion Draft Report.

- ▶ *Repay \$200,000 in Unallowable Contributions from DLP and Decline Acceptance of Future Contributions from Contractors* -- DRN respectfully disagrees with your determination that DRN violated federal conflict of interest rules when it accepted the \$200,000 contribution from DLP. DRN nevertheless concurs in the Recommendation. DRN will not accept future contributions from contractors. It is, however, impossible for DRN to repay DLP the \$200,000 grant since any obligation of PP&A to pay DLP and any right of DLP to receive payment have been merged and completely offset in DRN, which succeeds to the assets and liabilities of each entity.
- ▶ *Enforce Contract Requirements to Assure Billing is Based on Incurred Costs and Verify that Actual Costs Billed Are Allowable, Allocable, and Reasonable* -- Although DRN does not concede that the prior billing practices of its contractors violated federal regulations, DRN has already implemented this recommendation. As noted above, beginning in March 2004 and October 2005, respectively, DLP and ELC implemented expenditure-based monthly billing based on daily expense allocations. DLP continued this practice through the final month of its contract in January 2007. ELC has continued and will continue this billing practice in the future with regard to any funds received from DRN.

DRN trusts that its concurrence in your office's recommendations will bring this matter to a close. If you have any questions or concerns, please contact me.

Respectfully submitted,



Sherry Kidd
President
DRN Board of Directors