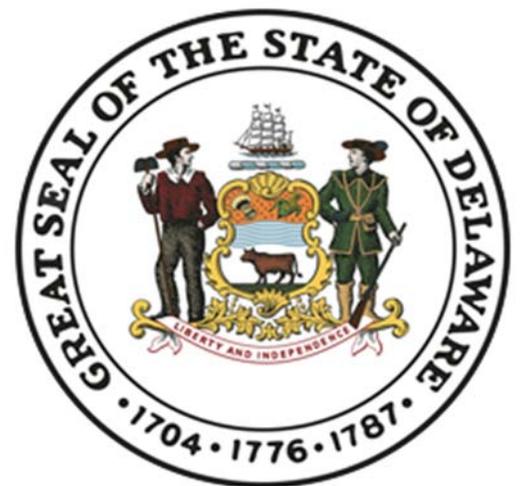


**State of Delaware
Office of Auditor of Accounts**

Developmental Disabilities Council

Special Investigation

R. Thomas Wagner, Jr., CFE, CGFM, CICA
Auditor of Accounts





State of Delaware
Office of Auditor of Accounts
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At a Glance

Working Hard to Protect YOUR Tax Dollars

Why We Did This Investigation

In October 2017, the Office of Auditor of Accounts (AOA) received complaints alleging that the Director of the Developmental Disabilities Council (the Council) (DDC) was violating State procurement and travel policies and procedures.

As a result of these concerns, AOA opened an investigation to review procurement and travel conducted by the Council during Fiscal Years ended June 30, 2015, 2016, and 2017.

The Director was placed on Administrative Leave in September 2017 and subsequently brought back to work in January 2018, prior to our investigation being completed.

This investigation was performed in accordance with the Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations*.

For further information on this release, please contact:

R. Thomas Wagner, Jr.
CFE, CGFM, CICA
(302) 739-5055

What We Found

AOA was able to substantiate or partially substantiate nine of ten allegations. Throughout the period under investigation, the Council failed to consistently follow State, federal, and internal procurement and travel rules.

During this investigation, AOA reviewed 23 professional services contracts, 18 out-of-state trips taken by various Council members and staff, and various travel-related PCard transactions.

AOA identified the following contract deficiencies:

- Contracts were awarded without following the required State RFP procedures;
- Contracts were awarded to contractors who failed to perform the work as required by the contracts;
- Contracts did not include a 40% match requirement;
- Contractors did not submit required reports by the specified deadline;
- Contracts were issued for purposes that did not align with a goal or objective of the State Plan; and
- Contracts were not signed by the Council Chair.

AOA identified issues with travel including violations where:

- The Council incurred \$365 of travel related expenses above the cost of using Fleet services;
- Travel requests did not have the proper approvals; and
- Travelers did not follow Council reporting requirements upon return from the trip.

In addition, AOA found that the Director assisted one contractor with applying for non-profit status and filing incorporation documents. This contractor was awarded one contract in Fiscal Year 2016, 8 months after their 501(c)(3) status was obtained.

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Abbreviations

AOA	Auditor of Accounts
BAM	State of Delaware <i>Budget and Accounting Policy Manual</i>
DSHS	Department of Safety and Homeland Security
DDC	Developmental Disabilities Council
FSF	First State Financials
OMB	Office of Management and Budget
PCard	Procurement Card
RFP	Request for Proposals

The conclusion of the allegation is defined as follows:

- Substantiated: The allegation has been verified by competent evidence.

- Partially Substantiated: A portion of the allegation has been verified by competent evidence; however, competent evidence to verify the entire allegation could not be provided by the agency or obtained by AOA, or competent evidence was found to dispute a portion of the allegation.

- Unsubstantiated: Competent evidence was found to dispute the allegation.

- Unable to Conclude: Competent evidence to verify the allegation could not be provided by the agency or obtained by AOA.

Allegations and Results

The following table summarizes the allegations and results of our investigation. Details of each allegation are provided below.

Table 1: Summary of Allegations and Results		
Allegation No.	Allegation	Result
1	The Director violated State procurement rules by issuing contracts without Requests For Proposals (RFPs) or competitive bidding.	Substantiated
2	The Director continued to issue contracts to a vendor who was not doing the work it was contracted for.	Substantiated
3	The Director helped friends complete the 501(c)(3) paperwork to establish a non-profit so it would be eligible to receive contracts.	Partially Substantiated
4	The Director would show preferential treatment to some contractors by waiving the match requirement.	Partially Substantiated
5	The Director violated the State’s travel policy by using a private car service or shuttle when traveling.	Substantiated
6	The Director would show preferential treatment to some Council/Committee members by approving travel requests without Council approval, but would make others request approval at the Council meeting.	Partially Substantiated
7	There is no reporting back to the Council or the Committees as to what the individual learned at training while they were away.	Partially Substantiated
8	Contractors are required to submit their contract expenditure log by the 15 th of each month but typically do not. In addition, the Council does not require the contractors to provide receipts/proof for the items they are being reimbursed for.	Substantiated
9	Council documents are often signed via a signature stamp.	Substantiated
10	The Director used the Council to obtain a salary raise.	Unsubstantiated

Procurement

Allegation #1 – Substantiated

The Director violated State procurement rules by issuing contracts without RFPs or competitive bidding.

The State of Delaware Budget and Accounting Manual (BAM) Section 5.3¹ has established the following thresholds that trigger formal bidding procedures for professional services:

Table 2: Professional Services Thresholds	
Threshold	Requirement
Less than \$50,000	Open Market Purchase
\$50,000 and over	Formal RFP Process

¹ Section 5.3, v.5.7 of the State of Delaware *Budget and Accounting Policy Manual* (BAM).

Out of 23 contracts reviewed, 4 met the threshold requirement for an RFP. DDC awarded 3 of these contracts without an RFP and, therefore, without proper DDC evaluation and approval of proposals.

Allegation #2 – Substantiated

The Director continued to issue contracts to a vendor who was not doing the work it was contracted for.

Results of Our Review

AOA found evidence of two contracts awarded in Fiscal Year 2015² to one contractor whose work was heavily edited and corrected by Council staff to meet the federal and internal Council reporting requirements. This contractor acknowledged in several emails that the information being provided was not correct and that assistance was needed in order to fix it. The same contractor was then awarded two more contracts in Fiscal Year 2017. The contractor did not sufficiently perform the work requested in the contract, resulting in DDC staff having to provide these deliverables. The allegation is further supported by the lack of expenditure reports, annual reports, and other customer surveys as required by the contracts.

Allegation #3 – Partially Substantiated

The Director helped friends complete the 501(c)(3) paperwork to establish a non-profit so that it would be eligible to receive contracts.

Results of Our Review

AOA found evidence through a final performance report submitted by the contractor that the Director assisted the group with filing for non-profit status and incorporation. However, because AOA could not prove that the intent was to help the group incorporate specifically for the purpose of obtaining contracts from DDC, we could not fully substantiate this allegation.

Allegation #4 – Partially Substantiated

The Director would show preferential treatment to some contractors by waiving the match requirement.

Results of Our Review

The *Developmental Disabilities Council Preparation of Proposals Guidance Booklet* requires that all contractors provide a match of 40 percent of the federal funds awarded.

The Council failed to properly state the amount of federal funds to be used on the contract, which affected the calculation of the match amount.

Out of 23 contracts reviewed, 8 contracts had a match requirement of less than 40 percent, and 9 contracts had a match requirement of more than 40 percent. AOA cannot prove the intent was to show preferential treatment as claimed in the allegation. In addition, the Council did not require contractors to submit itemized receipts or proof of how cash or in-kind matches were applied.

AOA found evidence of four contracts where the contractor was paid the amount reported as a match on its expenditure reimbursement logs. Council staff explained to AOA that these contracts are set up like this because they require the contractor to generate funds through registration fees, advertising fees, etc. Rather than retaining the funds as their payment for services rendered, the revenue generated by these activities is submitted to the Council which then pays it to the contractor. AOA did not perform any

² July 1, 2014 through June 30, 2015

procedures to verify the appropriateness of how this match is handled. See Figure 1 below for the process flowchart.

Figure 1: Contract Process Flowchart



Allegation #8 – Substantiated

Contractors are required to submit their contract expenditure log by the 15th of each month but typically do not, and the Council does not require the contractors to provide receipts/proof for the items they are being reimbursed for.

Results of Our Review

Of the 23 contracts examined, 21 required that expenditure reports be submitted monthly, within fifteen days after the end of the month. Two contracts did not include this requirement.

Two out of 21 contracts failed to submit the expenditure reports at all, and 11 out of 21 contracts submitted expenditure reports after the deadline. Nineteen out of 21 contracts did not contain adequate support to show how the funds were spent.

Allegation #9 – Substantiated

Council documents are often signed via a signature stamp.

Results of Our Review

Of 23 contracts examined, 17 contained the Council Chair’s signature stamp, 5 had live signatures, and one did not have the Chair’s signature.

The signature stamp was kept in an unlocked drawer in a DDC staff member’s office. All DDC staff were aware of the stamp’s location if they needed access to it. Since the signature stamp was not adequately secured, it is not possible to determine if the approval was administered by the correct authorized person.

Travel

Allegation #5 – Substantiated

The Director violated the State’s travel policy by using a private car service or shuttle when traveling.

Results of Our Review

The State’s travel policy “...applies to all State employees, Agencies, boards, commissions and others, ... who are engaged in authorized travel and who expend State funds for travel purposes....”³ It is the

³ BAM Section 11.1.2, v.4.22

responsibility of each agency to provide appropriate controls and approvals regarding travel expenditures. The policy further states that the agency "...must include policies covering the designation of approval authorities for travel expenditures."⁴

BAM Section 11.1.3, v.4.22 states, "State-owned vehicles should be used for out-of-state travel when such use is the most practical and economical mode of transportation, including the cost of tolls, fuel, and parking."

Of the 28 transactions tested, our review showed:

- One transaction totaling \$135 was for a private town car service used from the airport. A shared business shuttle was available and would have been a more economical mode of transportation.
- Four transactions totaling \$516 were for several individuals traveling to the same place at the same time, using separate car services. Only two of the four transactions should have been allowable because the individuals could have carpooled.
- Three separate town cars were used to transport seven individuals attending the same conference to and from the Philadelphia International Airport. AOA confirmed with the vendor that none of the reservations required handicap-specific accommodations, indicating that the group could have used a Fleet vehicle to travel.
- There were also two additional trips taken by the Director where airport shuttles were used to transport her from her home to the airport and back; however, a Fleet car would have been the most economical mode of transportation in these instances. The transactions for the aforementioned trips totaled \$787, but using Fleet vehicles would have saved the State \$365.

Allegation #6 – Partially Substantiated

The Director would show preferential treatment to some Council/Committee members by approving travel requests without Council approval, but would make others request approval at the Council meeting.

Results of Our Review

The *Delaware Developmental Disabilities Council Administrative Directions and Instructions to Staff, Section 510*, requires that travel requests submitted by Council or Committee members must be approved by the Council's Executive Committee.

Of the 18 trips attended by Council Members, 15 were not approved by the Council in the meeting minutes.

Allegation #7 – Partially Substantiated

There is no reporting back to the Council or the Committees as to what the individual learned at training while they were away.

Results of Our Review

The *Delaware Developmental Disabilities Council Administrative Directions and Instructions to Staff, Section 510*, requires that Council or Committee members who travel "provide conference materials and a written and/or verbal report to the Council within twelve weeks of return."

⁴ BAM Section 11.1.1, v.4.22

Of the 18 trips examined, 15 were attended by Council or Committee members. The remaining three were attended by DDC staff members only and were not subject to the reporting requirement. Of the 15 events attended by Council or Committee members, nine failed to present conference materials and a report to the Council after the event. Six met the reporting requirement.

Salary Increase

Allegation #10 – Unsubstantiated

Allegation #10: The Director used the Council to obtain a salary raise.

Results of Our Review

On July 1, 2014, the Director received an 8.6% salary increase. This increase was a result of the Council submitting critical reclassification paperwork to DSHS and OMB for approval.

This allegation is unsubstantiated because the Council submitted the necessary paperwork and obtained proper approval from OMB for the pay rate change. DDC did not provide evidence to demonstrate whether the Director or Council initiated the critical reclassification.

Other Findings

Unallowable Contracts

The *Developmental Disabilities Assistance and Bill of Rights Act of 2000* (P.L. 106-402) requires that any federal assistance provided to State Councils on Developmental Disabilities “be used to pay for the Federal share of the cost of carrying out projects in accordance with State plans.”⁵

In addition to the findings presented above, our review of 23 contracts found that 2 contracts did not align with a goal or objective of their federally required, and State approved, Strategic Plan.⁶ The scope of services in these two contracts included a historian to record the history of the DDC, and for a company to video and record 20 oral histories of persons with disabilities and individuals involved in the civil rights movement regarding advocating for individuals with disabilities.

Conclusion

Although the Council is primarily federally funded, it is a State agency operating under the governance of the Office of the Secretary of the Department of Safety and Homeland Security (DSHS),⁷ and as such, is required to follow all State rules and regulations. As detailed in the findings above, the Council failed to follow federal, State, and internal mandates as they relate to contract issuance, monitoring, and reporting, as well as failing to adhere to State travel policies and procedures as defined in the BAM for the Fiscal Years Ended June 30, 2015, 2016, and 2017.

⁵ P.L. 106-402, Sec. 122(a)(1)(B)

⁶ See the Council’s most recent Strategic Plan at <https://ddc.delaware.gov/pdfs/2017-2021%20State%20Plan.pdf>.

⁷ http://ddc.delaware.gov/pdfs/0057_001.pdf

Appendix A: Background

The Developmental Disabilities Council (DDC or the Council) is a State of Delaware (the State) agency operating under the governance of the Office of the Secretary of the Department of Safety and Homeland Security (DSHS).⁸ Its mission is to “...address the unmet needs of people with developmental disabilities through system-wide advocacy, planning and demonstration projects...” and “...to promote and embrace inclusion, equality and empowerment...”⁹

To achieve this mission, the Council funds a variety of projects and programs that focus on the areas of self-advocacy, inter-agency collaboration, health care, education, and early intervention. The services for these projects and programs are acquired through professional services contracts awarded by the Council.¹⁰

Council Members¹¹

The Council consists of Delaware residents appointed by the Governor, ranging from 21 to 40 members. The by-laws state that at least 60% of the members must consist of “individuals with developmental disabilities, parents or guardians of children with developmental disabilities, and immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves. The members shall at all times represent 1/3 individuals with developmental disabilities, at least 1/3 parents or guardians of children with developmental disabilities, and will include mandated representation of agencies and organizations described in the federal guidelines.” The Council also elects a Chair and Vice Chair annually from among its members.

Federally required positions serve at the pleasure of the Governor. All other positions serve a term of six (6) years and may be reappointed for one (1) additional term of six (6) years. The Governor may remove any member of the Council “...for misfeasance, nonfeasance, malfeasance, misconduct, incompetency or neglect of duty.”

The Executive Committee is comprised of nine members:

- Chair of the Council
- Vice-Chair of the Council
- Chair of the Financial Advisory Committee
- Chair of the Personnel Committee
- Chair of the Adult Issues Committee
- Chair of the Children & Families Committee
- Chair of the Policy & Law Committee
- Annually elected past chair
- Annually Elected Member at Large

The Executive Committee has the authority to approve funding up to the federal ceiling¹² for administrative expenses (without the full Council’s approval) and up to \$2,500 in each fiscal year for programmatic expenses without the full Council’s approval. The Executive Committee also has full

⁸ http://ddc.delaware.gov/pdfs/0057_001.pdf and Section 249 of the FY2018 Budget Bill (HB275)
<http://budget.delaware.gov/budget/fy2018/documents/hb275-hs1.pdf>

⁹ <http://ddc.delaware.gov/aboutagency.shtml>

¹⁰ The activities of the DDC are supported by DSHS employees consisting of a Director and administrative staff members.

¹¹ Developmental Disabilities Council By-Laws (<http://ddc.delaware.gov/pdfs/bylaws2011.pdf>)

¹² DDC By-Laws

discretion to approve use of the Council Fund and the Training Fund which has an annual budget of \$5,000.

Other committees are established by the Council Chair, at the advisement of the Executive Committee, to implement the Council’s programs and goals for empowerment and inclusion of the population with developmental disabilities and for the prevention of developmental disabilities.

Funding

The majority of the Council’s funding is received through the federally-funded Administration on Intellectual and Developmental Disabilities (AIDD).¹³ Grant funds are received on a reimbursement basis. Table A-1 below identifies the amount of federal grants received by the Council in State Fiscal Years ended June 30, 2015 through 2017.

Table A-1: Federal Grant Awards	
State Fiscal Year	Award Amount
2015	\$ 472,622
2016	487,511
2017	496,684

In addition, the Council received \$20,000 from the State’s budget bill in State Fiscal Years ended June 30, 2015 through 2017.

The programs and projects of the Council are described in a Strategic Plan¹⁴ and facilitated through contracts awarded by the Council. Contractors are required to match, either with cash or in-kind, at least 40 percent of the federal funds awarded.

¹³ <http://ddc.delaware.gov/aboutagency.shtml>

¹⁴ See the Council’s most recent Strategic Plan at <https://ddc.delaware.gov/pdfs/2017-2021%20State%20Plan.pdf>.