



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



**Audit of the Office of Justice Programs
Cooperative Agreement Administered
by the Philadelphia District Attorney's
Office
Philadelphia, Pennsylvania**

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**AUDIT OF THE OFFICE OF JUSTICE PROGRAMS
COOPERATIVE AGREEMENT ADMINISTERED BY
THE PHILADELPHIA DISTRICT ATTORNEY'S OFFICE
PHILADELPHIA, PENNSYLVANIA**

EXECUTIVE SUMMARY*

The Department of Justice Office of the Inspector General, Audit Division, has completed an audit of a cooperative agreement awarded by the Office of Justice Program's (OJP) Bureau of Justice Assistance (BJA) to the Philadelphia District Attorney's Office (PDAO), award number 2010-DB-BX-K083. The award amount, \$641,695, was provided to the PDAO as one of five award recipients of the Encouraging Innovation: Field-Initiated Programs project, Strategies to Sustain Innovative or Evidence Based Programs. The purpose of the award was to improve the functioning of the criminal justice system, prevent or combat juvenile delinquency, and to assist victims of crime (other than compensation).

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

We reviewed the PDAO's compliance with key award conditions and found the PDAO had several internal control deficiencies and performance setbacks in meeting the terms and conditions of the award for several of the management areas we tested. Specifically, we determined that the PDAO did not fully comply with award requirements and changed the methods used to complete its award-funded project without advance approval. Deficiencies ranged from not always requesting required approvals for budget modifications, to employing consultants that were contracted on a non-competitive, sole-source basis at rates that exceeded allowable amounts. We also found that the PDAO failed to comply with City of Philadelphia procurement processes associated with contracting for professional services. Finally, we identified internal control shortcomings in the area of budget management and control, progress reporting, and compliance with award special conditions. As a result of these deficiencies, we question \$310,670 in award expenditures, or about 48 percent of the award total.

The report contains 7 recommendations which are detailed in the Findings and Recommendations section of the report. Our audit objectives, scope, and methodology appear in Appendix 1. Our Schedule of Dollar-Related Findings is included in Appendix 2.

* Redactions were made to the full version of this report for privacy reasons. The redactions are contained only in Appendix 3, the grantee's response, and are of individuals' identities.

We discussed the results of our audit with PDAO officials and have included their comments in the report, as applicable. In addition, we requested responses to the draft report from the PDAO and OJP and their responses are appended to this report as Appendix 3 and 4, respectively. Our analysis of the responses, as well as a summary of actions necessary to close the recommendations can be found in Appendix 5 of this report.

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INTRODUCTION

The Department of Justice (DOJ) Office of the Inspector General, Audit Division, has completed an audit of a cooperative agreement awarded by the Office of Justice Programs's (OJP) Bureau of Justice Assistance (BJA) to the Philadelphia District Attorney's Office (PDAO), award number 2010-DB-BX-K083. The award amount, \$641,695, was provided to the PDAO as one of five award-funded recipients of the Encouraging Innovation: Field-Initiated Programs, Strategies to Sustain Innovative or Evidence Based Programs. The purpose of the award was to improve the functioning of the criminal justice system, prevent or combat juvenile delinquency, and to assist victims of crime (other than compensation).

The objective of this audit was to determine whether costs claimed under the award were allowable, reasonable, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the award. We also assessed the extent to which the goals and objectives of the award have been accomplished.

Office of Justice Programs

The Office of Justice Programs, within the Department of Justice, provides the primary management and oversight of the award we audited. According to OJP's website, its mission is to increase public safety and improve the fair administration of justice across America through innovative leadership and programs. OJP works in partnership with the justice community to identify the most pressing crime-related challenges confronting the justice system and to provide information, training, coordination, and innovative strategies and approaches for addressing these challenges.

Bureau of Justice Assistance

The mission of the Bureau of Justice Assistance (BJA), a component of OJP, is to provide leadership and services in award administration and criminal justice policy development to support local, state, and tribal justice strategies to achieve safer communities. According to BJA's website, it supports programs and initiatives in the areas of law enforcement, justice information sharing, countering terrorism, managing offenders, combating drug crime and abuse, adjudication, advancing tribal justice, crime prevention, protecting vulnerable populations, and capacity building.

Encouraging Innovation: Field Initiated Programs

According to project materials accompanying the award solicitation, the “Encouraging Innovation: Field Initiated Programs” project was to improve the functioning of the criminal justice system, to prevent or combat juvenile delinquency, and to assist victims of crime (other than by providing compensation). BJA recommended that 11 applications under this solicitation receive funding. The three factors considered in determining the applications recommended for funding included: (1) peer review ratings and reviewer comments; (2) BJA’s Policy Office review of project designs proposed by applicants, particularly whether the application responded to a precipitous or extraordinary type of crime, proposed to implement an innovative or unique solution, strategy, and/or response to an identified problem, or addressed how to sustain innovative or evidence-based interventions; and (3) the organization’s past performance.

Philadelphia District Attorney’s Office

According to its website, the Philadelphia District Attorney's Office (PDAO) is the largest prosecutor's office in Pennsylvania and one of the largest in the nation. It serves the more than 1.5 million citizens of the City of Philadelphia, employing 600 lawyers, detectives, and support staff. The PDAO is responsible for prosecution of over 75,000 criminal cases yearly, ranging from disorderly conduct to aggravated assaults, fraud investigations, rapes, and murders. The District Attorney is an elected official serving a four-year term.

Our Audit Approach

We tested compliance with what we considered to be the most important conditions of the cooperative agreement. Unless otherwise stated in our report, we applied the OJP Financial Guide as our primary criteria during our audit. The OJP Financial Guide serves as a reference manual assisting award recipients in their fiduciary responsibility to safeguard award funds and ensure that funds are used appropriately and within the terms and conditions of the award. Additionally, the OJP Financial Guide cites applicable Office of Management and Budget (OMB) and Code of Federal Regulations (CFR) criteria that we also considered in performing our audit. In those instances where the City of Philadelphia imposed more stringent or restrictive criteria and requirements than those included in the OJP Financial Guide and the overall award terms and conditions, we applied those guidelines in performing our audit. We tested the PDAO’s:

- **Internal Control Environment** to determine whether the PDAO has adequate internal controls over administration of this award to ensure compliance with the terms and conditions of the award.
- **Personnel and Fringe Benefit Expenditures** to determine whether the personnel and fringe benefit expenditures charged to the award were allowable, supported, accurate, and whether award-funded positions were within the approved budget.

- **Other Award Expenditures** to determine whether the non-personnel and fringe benefit costs charged to the award were allowable and supported.
- **Budget Management and Control** to determine whether the PDAO adhered to the OJP-approved award budgets for the expenditure of award funds.
- **Reporting** to determine whether the required periodic Federal Financial Reports and Progress Reports were submitted on time, and accurately reflected award activity.
- **Drawdowns** (requests for funding) to determine whether requests for reimbursement, or advances, were adequately supported, and if the PDAO managed award receipts in accordance with all federal requirements.
- **Compliance with Award Special Conditions** to determine whether the PDAO complied with the terms and conditions specified in the award documents.
- **Accountable Property** to determine whether the PDAO had procedures for reporting and controlling accountable property, and whether the property was included in its inventory.
- **Monitoring Contracts and Consultants** to determine whether the PDAO monitored organizations under contract to them, and if the organizations complied with the PDAO's overall financial management requirements.
- **Program Performance and Accomplishments** to determine whether the PDAO achieved award objectives and to assess performance and accomplishments.

Where applicable, we also tested for compliance in the areas of matching funds, program income, indirect costs, and monitoring of subgrantees. For this cooperative agreement, we determined that matching funds were not required, the award-funded programs generated no program income, and there were no indirect costs, or subgrantees.

FINDINGS AND RECOMMENDATIONS

We reviewed the PDAO's compliance with key award conditions and found several internal control deficiencies and setbacks in meeting the terms and conditions of the award for several of the management areas we tested, and in accomplishing its program performance objectives as originally planned. We determined that the PDAO did not fully comply with award requirements in requesting advance approval for budget modifications and in following appropriate contracting requirements. We also identified internal control shortcomings in the area of budget management and control, progress reporting, and compliance with award special conditions. As a result of these deficiencies, we question \$310,670 in award expenditures, or about 48 percent of the award total. These conditions, including the underlying causes and potential effects on program performance, are further discussed in the body of this report.

Internal Control Environment

Our audit included a review of the PDAO's accounting and financial management information system, and multiple year Single Audits and Philadelphia City Controller's internal audit reports to assess the risk of non-compliance with laws, regulations, guidelines, and the terms and conditions of the award. We also interviewed management staff from the PDAO and performed personnel, fringe benefit, and other expenditure transaction testing to further assess risk, test key internal controls, and assess compliance with award requirements and special conditions.

According to the OJP Financial Guide, award recipients are responsible for establishing and maintaining an adequate system of accounting and internal controls. An acceptable internal control system provides cost and property controls to ensure optimal use of funds. The Financial Guide also requires award recipients to use more stringent internal control mechanisms in the form of existing policies and procedures if those controls meet the minimum requirements imposed under the Financial Guide. In conducting our audit, we found multiple instances where the requirements governing the PDAO, as an organization within the City of Philadelphia, did exceed minimum Financial Guide requirements and, as a result, we considered that in testing for compliance with award requirements.

According to the PDAO Chief Financial Officer, PDAO management believed an adequate system of internal controls was in place and working as intended at the time of our fieldwork. In conducting this audit, we evaluated the PDAO's internal controls that we considered significant within the context of our audit objectives. In doing so, we identified reportable deficiencies that are discussed elsewhere in this report – under other award expenditure testing, grant budget management and control, and compliance with award special conditions.

Financial Management System

The OJP Financial Guide requires recipients to maintain records to adequately identify the source and application of award funds provided for financially supported activities. These records must contain information pertaining to awards and authorizations, revenues (award funding), assets (equipment and capital items), procurement and contracting, and expenditures including personnel costs and associated fringe benefit charges.

The PDAO maintained these records in a separate account assigned a unique cost center class code within the City of Philadelphia's centralized financial and accounting management information system known as FAMIS. We determined that this account tracked award funding requests classified as revenues and all expenditures charged to the award. We also determined that the accounting documentation provided to us was complete, accurate, and sufficiently reliable to serve as a full representation of the PDAO's accounting transaction details, and to record the receipt and expenditure of award funds. Accordingly, we used the system for our detailed review and testing of award-funded transactions in conjunction with assessing overall compliance.

Single Audits and Other Internal Reports

We reviewed the City of Philadelphia's Schedule of Financial Assistance that included Single Audit Reports prepared by the City's Controller's Office for its fiscal years (FY) 2011, 2012, and 2013 that included the PDAO within the scope of those audits. We also reviewed internal reports that addressed areas common to all City agencies including the PDAO. While we found a reportable internal control finding in the Single Audit reports specific to the PDAO, we determined that the PDAO management had adequately addressed the condition identified and had taken appropriate action. Overall, we found no other reportable control matters in any of the Single Audit reports that would require us to expand our grant risk assessment within the context of our audit objectives.

Personnel and Fringe Benefit Expenditures

We tested a judgmental sample of the PDAO's employee personnel and associated fringe benefit expenditures to determine if they were allowable, supportable, and accurate. To determine if expenditures were allowable, we compared the expenditures to the approved budget for these expenditures included with the grant award. To determine if personnel expenditures were supported and accurate, we tested a sample of transactions by evaluating the allocation of personnel expenditures and fringe benefits based on the requirements identified by OJP in the award document. We examined employee payroll records for two non-consecutive pay periods, and total fringe benefits charged to the award as of September 30, 2013. We found all payroll disbursements for employee personnel and fringe benefit expenditures tested were allowable, supported, and accurate.

Other Award Expenditures

The initial award budget for the PDAO's program approved by OJP allowed for other expenditures that included travel and supplies. The PDAO budget was later modified and approved to shift funding allocated from supplies, personnel, and fringe benefit expenditures to contracts and consultants, travel, and equipment. In performing our transaction testing we relied on the OJP Financial Guide, which says allowable costs must be reasonable, allocable, necessary to the project, and comply with the funding statute requirements. Moreover, included with the award are a series of Special Conditions that impose additional requirements such as setting dollar thresholds that trigger a requirement for advance OJP approval for non-competitive and sole-source contracts made under the award, and that cap payments to consultants at a fixed hourly or daily rate not to exceed a specific dollar threshold without advance OJP approval before the obligation or expenditure of award funding.

In performing our testing and analysis, we determined that some of the PDAO award transactions we reviewed, as of January 2015, were out of compliance with OJP Financial Guide requirements as well as more stringent and binding City of Philadelphia internal policies and requirements for various reasons. While contractual agreements were included in the modified and OJP approved award budget, we identified internal control deficiencies in the procurement of information technology (IT) contracts by the PDAO. In its use of IT consultants, the PDAO almost exclusively entered into non-competitive, sole-source professional services contracts with multiple IT consulting firms. We were told these professional services contracts were done on a stand-alone basis and were not part of an existing contractual agreement.

The City of Philadelphia Home Rule Charter applicable to all City agencies including the PDAO requires that for non-competitive contracts for professional services whose value is anticipated to exceed \$32,000, the City must issue a public notice of contracting or bid opportunity, except in very limited circumstances. The limited circumstances cited in the Home Rule Charter mandates the Finance Director or City Solicitor to certify in writing any waiver to this requirement. In its use of award funding, the PDAO entered into four consulting contracts at or above \$32,000 for which it did not issue a public notice of contracting or bid opportunity or receive a waiver from either the Finance Director or City Solicitor, as required. In addition, the City Law Department was not afforded the opportunity to review the contracts before the PDAO executed them, also as required by the Home Rule Charter. The City Law Department officials told us that absent formal review by the Law Department, the contracts may not always contain the required Law Department universal contractual language necessary to safeguard City interests. As a result we question \$310,670 in payments made for IT consulting contracts without proper advance review and approval by the City Law Department. In addition to the legal review requirement based on contract value, we also found the PDAO did not follow applicable contractual requirements for the non-competitive contracts that also require City Law Department review and approval. As a result,

we question \$266,400 in costs for consulting contracts not competitively bid and non-compliant with local sole-source requirements.

Additionally, we determined the PDAO contracted with multiple IT firms for professional services at hourly rates well above the OJP limit of \$56.25 per hour, or \$450 per day, at the time the agreements were executed, an essential award compliance requirement to ensure reasonableness and consistency with current market value for services. As a result of charges to the awards in excess of approved OJP rates, we question \$198,080.

We discussed these contracting deficiencies with PDAO officials who generally disagreed with our assessment and conclusions, as we were told during our audit that the PDAO, as a City agency, followed all existing City procurement and contracting guidelines.² In our view, these internal control shortcomings highlight the need for the PDAO to develop and implement more robust and well documented policies and procedures to better ensure compliance with OJP award and City of Philadelphia requirements.

Budget Management and Control

Criteria referenced in the OJP Financial Guide and established in 28 C.F.R 66 § 30 addresses budget controls surrounding awardee financial management systems. According to the criteria, awardees are permitted to make changes to their approved budgets to meet unanticipated program requirements, however, the movement of funds between approved budget categories in excess of 10 percent of the total award must be approved in advance by the awarding agency. In addition, the criteria requires that all awardees establish and maintain program accounts which will enable separate identification and accounting for funds applied to each budget category included in the approved award. Moreover, funds charged to the various approved budget categories should adhere to the requirements definition associated with each budget category. Approved Grant Adjustment Notices (GAN) from the awarding agency are the formal mechanism used to authorize the transfer of funds between budget categories when required.

According to the PDAO's Chief Financial Officer (CFO), in formulating the original award budget, considerable research was done to identify the best practices followed by other District Attorneys' (DA) offices around the country, taking on similar programmatic initiatives. The CFO also researched with colleges to determine how much an entry-level criminologist typically earns in developing the personnel budget for the award-funded program. We were told all of this information was instrumental in developing the PDAO's initial budget request for the award. In the course of implementing this project, the PDAO encountered what it described as previously unknown factors, such as an IT infrastructure too dated to implement their programmatic goals as initially planned. This challenge resulted

² The Philadelphia Code and accompanying Home Rule Charter defines a City Agency as any office, department, board, commission or other agency of the City of Philadelphia. As a result, we determined that the PDAO is considered an agency of the City of Philadelphia.

in a series of Grant Adjustment Notices that the PDAO submitted and OJP approved to place greater reliance on the use of outside IT consultants and shift some of the funding between existing budget categories.

Equipment as defined by the City of Philadelphia's Contract Cost Principles and Guidelines is any nonexpendable, tangible, personal property having a useful life of more than two years and an acquisition cost of \$500 or more per unit. The PDAO expended a total of \$2,100 for four custom made tables and \$3,384 in computer hardware and associated software and treated these items as capital equipment and maintained detailed property records in accordance with its own guidelines and requirements. However, the PDAO misclassified these items as supplies in the OJP approved award budget contrary to its own internal City policy.

In October 2010, OJP approved an itemized initial award budget that included budget categories for personnel, fringe benefits, travel, and supplies. The award was still in progress at the time of our audit fieldwork, but the initial budget was significantly modified, as early as April 2011, to shift funding from personnel and associated fringe benefits and redirect the budget to contracts and consultants. Additionally, the budget was later modified in October 2013 to add equipment purchases and additional funds for contracts and consultants. As of May 2015, the award budget had been modified with contracts and consultants representing 47 percent of the budgeted award total.

In reviewing the PDAO's performance in budget management and control, we determined that the PDAO did not fully comply with OJP Financial Guide requirements when making the necessary Grant Adjustment Notice requests for changes in the approved budget. In one instance, we found that the PDAO had already obligated \$125,000 in award funds to an IT consultant on a non-competitive basis (sole-source) before getting approval from the OJP to do so. We also determined that the PDAO, in making requests to OJP in modifying its budget, never disclosed its intent to continue making non-competitive, sole-source contractual consulting agreements, or to compensate its consultants in excess of the OJP allowable hourly or daily rate in effect at that time. Additionally, the PDAO included such items in the award budget as supply items, but accounted for these items as capital equipment in conformity with its own internal procurement guidelines. In classifying the items as supplies in the award budget, the PDAO failed to adhere to OJP budget guidance that cites a requirement to follow an organization's own capitalization policy in classifying equipment. Further, in classifying the equipment as supplies, the PDAO also failed to meet the OJP budget definition of supplies which states supplies are to include any materials that are expendable or consumed during the course of the project. The costs associated with these internal control deficiencies are already disclosed and discussed under the "Other Award Expenditures" section of this report. The failure to get advance OJP approval for budget modifications when required and to utilize non-competitive IT consulting agreements potentially places award funds at risk for possible waste and mismanagement. Moreover, incurring costs without advance approval and misclassifying capital equipment purchases as supply items undermine OJP's effectiveness in oversight and monitoring, and could jeopardize the overall success

of the project. As a result, we recommend that OJP require the PDAO to implement policies and procedures that ensure capital property and equipment are appropriately classified within award budgets.

Reporting

Federal Financial Reports

The financial aspects of the award we audited are monitored through Federal Financial Reports (FFRs). FFRs are designed to describe the status of award funds and should be submitted within 30 days of the end of the most recent quarterly reporting period. For periods when there have been no program outlays, a report to that effect must be submitted. Funds for the current award or future awards will be withheld if reports are not submitted or are excessively late.

We were told that the PDAO Grants Administrator completed FFRs by referring to reports from the City's financial accounting and management information system that aggregate the award expenditures by budget category for the quarter, taking the sum of the expenditures for each category, and reporting it on the quarterly FFR. We sampled and reviewed four recent FFRs and concluded that each of the reports tested were accurate. We also tested each of the four recent FFR's for timeliness using the criteria noted above and found each of the four FFR's were submitted timely. However, we did identify two instances in early 2011 and late year 2012 where award funding was temporarily frozen because the PDAO was overdue on submitting its required quarterly financial status report. A PDAO official attributed the overdue FFRs to a misunderstanding as to the reporting due date in each instance. Funding was later released after the PDAO submitted the overdue reports and, from our testing, we found no evidence that this condition remained, nor do we view it as a recurring systemic problem after it was remedied in 2012.

Progress Reports

The OJP Financial Guide states that progress reports are to be prepared twice a year, and the reports are to describe the performance of activities or accomplishments of objectives as set forth in the approved award application. Progress reports must be submitted within 30 days after the end of the reporting periods, which are June 30 and December 31, for the life of the award.

We reviewed the progress reports the PDAO submitted, covering the period July 2011 to December 2014, and found the PDAO submitted its reports within the required time period specified by the OJP Financial Guide. The reports included, among other things, a narrative of what the PDAO accomplished during the reporting period and its progress towards meeting the award's goals. Additionally, the narratives accompanying the two separate one-year grant extensions the PDAO received confirm the difficulties the PDAO experienced implementing the award within the scope of the project as originally envisioned and without the aid of consultants to do so. Moreover, the accuracy of the reports was questionable in

terms of completing the project on time within the original 36-month award timeframe. The PDAO's periodic progress reports provided to BJA warranted a more robust and complete disclosure of actual project status that addressed those issues and challenges that it identified as impeding progress. The progress reports also needed to disclose what needed to be done to correct those issues, the timeframes associated with doing that, and what grant-funded work still remained. Without a complete, accurate, and full disclosure of progress to date, the BJA is not in a position to effectively monitor and assist grant recipients in the absence of any information to the contrary or in the absence of a grantee's request for assistance. We recommend the PDAO implements and adheres to documented policies and procedures to ensure that periodic progress reports are accurate, complete, and provide full disclosure of award progress to date and reasonable expectations as to remaining work that still needs to be accomplished.

Drawdowns

Drawdown is a term to describe when a recipient requests funding for expenditures associated with an award program. The OJP Financial Guide establishes the methods by which DOJ makes payments to awardees.

At the time of our most recent field work, the PDAO had requested funding for the full \$641,695 award total. From our testing, we determined that award funds were requested on a reimbursement basis after incurring expenditures, and the PDAO's drawdown procedures were adequate and complied with award requirements.

Compliance with Other Award Conditions

In addition to the general agreement requirements, we tested for compliance with terms and conditions specified in the cooperative agreement award documents that were generally not tested elsewhere in the audit. The award contained 21 special conditions. We found that the PDAO complied with most of the special conditions we tested, except for the findings previously reported and those discussed below.

The award included a special condition that prohibited the PDAO from paying any award-funded consultant at a rate in excess of \$56.25 per hour or \$450 a day for an 8 hour day. Any PDAO deviation from complying with this requirement required a detailed budget justification that needed advance OJP approval prior to the obligation or expenditure of any award funds for this purpose. From our audit, as we discussed earlier in this report, we determined that the PDAO violated this requirement when it made extensive use of IT consultants to complete the project and often paid those consultants at rates that exceeded \$56.25 per hour (based on an 8 hour workday) or \$450 daily without seeking OJP advance approval to do so.

Additionally, the award included a special condition regarding sole-source procurement whenever a contract's cost exceeded \$100,000 and there had been no open competition in obtaining the contractor or consultant services. In addition to

this special condition, the OJP Financial Guide requires that whenever a non-competitive contract exceeds \$100,000, the recipient must submit a Grant Adjustment Notice requesting sole-source approval in advance. However, the PDAO was also subject to a more stringent and restrictive self-imposed City requirement that sole-source contracts exceeding \$32,000 must be reviewed and approved in writing by the Procurement Commissioner, the City Finance Director (Procurement Department) and the City Solicitor (Law Department) in advance of executing the contract. We consulted the City of Philadelphia Home Rule Charter specifically addressing non-competitively bid contracts and determined the only available exceptions that would apply are if certain narrowly defined special circumstances existed that include the potential loss of federal grant funds, potential violation of federal law, potential material threat to public safety, or the need to avoid material damage to the legal interests of the City. We discussed this with City officials from these departments and were told that they had not reviewed or seen the consultant contractual agreements we cited, nor were they aware of any exceptions that would allow for non-compliance with a non-competitive, sole-source award under the circumstances that we documented and described.

We determined that the PDAO's approved budget allowed for the use of consultants under open competition. However, PDAO officials told us they relied on the use of sole-source IT consultant contracts because the PDAO already had an established working relationship with the consulting firm, the consulting firm had experience with the case management system in use at the PDAO, and that the PDAO's IT personnel did not have the experience to handle the unexpected roadblocks of this IT project. Moreover, PDAO officials told us they did not believe they violated sole-source contract requirements because the IT consultant was already doing related work for the PDAO on separate contracts that had been awarded competitively, and that these other contracts were not being funded under the award. However, these same officials acknowledged that the IT contracts awarded under this grant were for stand-alone professional services and represented consulting arrangements, as the supporting documents we reviewed clearly stated.

When special conditions are not closely followed, grant funds are at risk for potential waste and mismanagement, and the awarding agency has no assurance that project performance will not be compromised. We recommend the PDAO enhance its policies and procedures to ensure compliance with grant special conditions without exception.

Accountable Property

The OJP Financial Guide states that award recipients are required to conduct a biennial inventory of equipment purchased with award funds and to retain property records according to the conditions specified within the OJP Financial Guide. The Financial Guide also states that recipients must establish an effective system for property management. Additionally according to PDAO officials, City internal policy required the PDAO to maintain detailed records of all property and

equipment within its accounting system and to annually perform a physical inventory verification.

From our audit we determined the PDAO purchased \$22,349 of property and equipment using award funding and treated the purchases in compliance with the City's procurement guidelines. We noted that the PDAO misclassified some of the purchases, as discussed above, in the award budget as supplies. However, the PDAO prepared and maintained detailed property records, included bar coding on the items we verified, designated those items as federally funded, and included those items in its annual inventory for all of the equipment purchased under the award. Overall, the PDAO fully complied with OJP Financial Guide requirements for accountable property.

Monitoring Contracts and Consultants

According to the OJP Financial Guide, direct recipients should ensure that the monitoring of organizations under contract to them is performed in a manner that will ensure compliance with their overall financial management and programmatic requirements.

We found that the PDAO relied heavily on outside contracts and consultants in completing the project. From our discussions with PDAO officials and a review of documentation provided to us, we determined that the consultants were generally meeting the PDAO's project completion expectations with some exceptions. We also determined that, early in the project timeline, the PDAO made a decision to change its approach in completing the project. Additionally, in discussing the modification of the project as presented in the application for funds, the PDAO acknowledged that this IT project was the largest it had ever undertaken and we were told the PDAO did not develop a project risk assessment or implement any additional policies or procedures specific to this project.

In reviewing the overall performance of the project, we noted setbacks occurred in the PDAO's initial use of IT consultants. Specifically, the PDAO initially engaged an IT consultant to perform web services programming for the electronic discovery component of the project. However, after 3 months had passed and after spending \$44,270 in award funding, the PDAO determined the consultant was not meeting project needs and the City's process for bringing aboard a new consultant was too protracted. After this consultant was removed, the PDAO independently contracted with another IT consultant who the PDAO had used in the recent past, but this arrangement also proved unsuccessful. The PDAO made a decision to terminate that contract with the follow-on IT consultant just after 4 months and after spending \$12,410 of award funding. The PDAO terminated that contract because the consultant's work was not to the specifications required by the principal IT consulting firm developing the overall document management system.

The PDAO spent \$56,680 for IT consultants, approximately 9 percent of the overall award budget, on the two failed contracts. These difficulties caused delays in the overall project completion originally contemplated when the grant was first

awarded. Because large scale projects such as that being done by the PDAO are inherently risky by their very nature, are heavily IT dependent, rely on the use and expertise of myriad IT consultants and specialists, and have not been done elsewhere, it is critical that the PDAO have effective policies and procedures in place and working as intended to ensure performance expectations are being met fully and timely.

Program Performance and Accomplishments

This award was made in conjunction with the Office of Justice Programs' Encouraging Innovation: Field Initiated Programs. According to the OJP competitive award announcement, the awards under this program were intended to support innovative field-initiated programs that either (1) strategically addresses emerging crime issues or a precipitous increase in crime, (2) includes innovating strategies or solutions to a significant crime issue or problem, or (3) implements strategies to sustain innovative or evidence-based programs. The PDAO was competitively selected as one of five award recipients under the category of Strategies to Sustain Innovative or Evidence Based Programs.

In its application, the PDAO outlined the need for and creation of a comprehensive, performance-based approach to address shortcomings faced in its jurisdiction's criminal justice system. The PDAO specifically requested funding to support the hiring of three positions:

- business management/systems engineering expert - to "develop the most meaningful key performance indicators, and to recommend specific methods for timely data collection and conversion of data into reports that reliably identify critical performance strengths and weaknesses."
- criminologist to "identify evidence-based strategies to respond to identified system weaknesses and to evaluate the effectiveness of implemented strategies."
- Information technology specialist – to operationalize the data collection and reporting systems.

The application also stated that the collaboration of these positions would form the core of the award-funded program to sustain its transition to a performance-based prosecution office, with the ultimate goal of holding more offenders accountable and improving public safety.

In accepting the award, the PDAO acknowledged that the program it intended to implement was capable of replication nationwide, capable of being sustained after federal funding ended, and could be implemented in a project timeframe of 36 months, as it cited in its original response to the solicitation. The project's initial award period was from October 1, 2010, to September 30, 2013.

As described earlier in this report, the PDAO changed the scope of how the award funding was used for the project. Specifically, while almost the entire approved project budget was for the PDAO personnel to complete the project, through Grant Adjustment Notices during the award period, in addition to extending the end date of the project to September 30, 2015, the PDAO reallocated substantial funding to IT consultants to complete the majority of the work.

With the award, the PDAO's stated goals included holding more offenders accountable and improving public safety, resulting in more effective and efficient functioning of the Philadelphia criminal justice system as a whole. Officials told us the PDAO's progress towards this goal was evidenced in an article published in the local media in December 2013. According to the article, the PDAO used research data in deciding to apply initiatives such as Gun Stat, which increased bail amounts for defendants facing gun charges, resulting in a decrease in violent crime across Philadelphia. The PDAO's Project Manager told us that the change resulted in less failure-to-appear (FTA) cases in court especially for Violation of Uniform Firearms Act (VUFA) offenders. Research had previously found that FTAs were diminishing the efficiency of the judicial process by wasting resources, wearing out witnesses who would be less likely to appear for subsequent trial listings, effectively increasing the likelihood that the case would not be adjudicated on its merits, and undermining respect for the criminal justice system as defendants would suffer no consequences for disregarding the judicial process.

We reviewed available documentation and had discussions with multiple PDAO officials to assess program performance and accomplishments. From our discussion with the Project Manager and CFO, the PDAO's accomplishments through this award included upgrading its case management system to better monitor reasons for discontinuity of cases, and improving its staffing approach for its charging unit. The PDAO also provided documentation highlighting a new diversionary program initiated through this award that would shift the courts' focus away from marijuana cases, effectively freeing up resources for other violent crime cases. They also provided an article showing its participation in the "Focused Deterrence" approach to combating violent crime.³ In regards to project replication and sustainability, PDAO officials told us that, in their view, the program was capable of replication and there has been some interest expressed by other District Attorney's (DA) offices locally and one DA office located in the mid-west. Additionally, we were told sustainability would not be an issue as local city-wide funding was already being used and additional funding was being requested to continue supporting the PDAO's efforts in this area. Overall, PDAO officials expressed confidence in the results and accomplishments that the award funding was able to deliver.

Based on the collective data we gathered and the discussions with the PDAO officials, we identified performance missteps that led to delays in project completion beyond the original 36-month timeframe.

³ "Focused Deterrence" is a strategy developed by City officials, which combats gang violence through outreach and targeted enforcement.

PDAO officials cited several factors that they said were beyond their control contributing to the change in approach and the unexpected project delays. These officials also acknowledged that there were lessons learned and potential best practices that could be put to use in the future. In our view, while the project has considerable merit and there is the potential for its use elsewhere by other criminal justice agencies, its likelihood for easy replication may be limited.

Conclusion

We found that the PDAO did not fully comply with essential grant requirements in the areas we tested. Specifically, we determined that the PDAO did not fully comply with requirements in requesting advance approval for significant budget modifications and in its use of IT consultants. In making adjustments to the award-funded program, the PDAO used consultants that were exclusively contracted on a non-competitive, sole source basis. These same consultants were also compensated at rates exceeding allowable rates without always getting advance approval. In addition, the PDAO failed to satisfy the more restrictive and overarching procurement and contracting requirements established by the City of Philadelphia in areas that included non-competitive, sole source contracting, and the local review and approval process attendant with contracting for professional services. We also identified internal control shortcomings in the PDAO budget management and control, progress reporting, and compliance with award special conditions. As a result of the deficiencies, we question \$310,670 in award expenditures, or about 48 percent of the award total.

Recommendations

We recommend that OJP:

1. Ensure the PDAO implements and adheres to documented policies and procedures that place greater accountability and safeguards over federal funds with respect to compliance with the City of Philadelphia imposed policies and requirements that are more restrictive than those under OJP grant guidelines. This includes compliance with both OJP grant specific contracting requirements and City of Philadelphia imposed criteria and mandates when making use of non-competitive, sole source contracting for consultants.
2. Ensure the PDAO implements and adheres to documented policies and procedures that ensure capital property and equipment is accurately classified and reported under the award budget.
3. Ensure the PDAO implements and adheres to documented policies and procedures that ensure budget Grant Adjustment Notices fully comply with OJP requirements, including getting advance OJP approval for budget modifications when required before the obligation or expenditure of grant funding.

4. Ensure the PDAO implements and adheres to documented policies and procedures that ensure consultant rates above the allowable hourly or daily rate fully comply with OJP requirements.
5. Remedy \$310,670 in unallowable expenditures for failure to obtain advance approval in using non-competitive, sole-source contracting for consultants. This total also includes \$198,080 in unallowable expenditures for consultants paid above the allowable hourly or daily rate without advance OJP approval. Additionally, this total includes \$266,400 in unallowable expenditures for not competitively bid and lacking local source approvals.
6. Ensure the PDAO implements and adheres to documented policies and procedures to ensure that periodic progress reports are accurate, complete and provide full disclosure of award progress to date and reasonable expectations as to remaining work that still needs to be accomplished.
7. Ensure the PDAO implements and adheres to documented policies and procedures that ensure the routine monitoring of compliance with award special conditions.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of the audit was to determine whether reimbursements claimed for costs under the cooperative agreement and its supplements were allowable, reasonable, and in accordance with applicable laws, regulations, guidelines, and the terms and conditions of the award, and to assess program performance and accomplishments. Our audit reviewed performance in the following areas: (1) internal control environment, (2) personnel and fringe benefit expenditures, (3) other award expenditures, (4) budget management and control, (5) reporting, (6) drawdowns (funding requests), (7) compliance with other award conditions, (8) accountable property, (9) monitoring contracts and consultants, and (10) program performance and accomplishments. We determined that program income, matching costs, and indirect costs were not applicable to this award.

We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In conducting our audit, we used sampling while testing award program expenditures. In this effort, we employed a judgmental sampling design to obtain broad exposure to numerous facets of the award reviewed, such as high dollar amount transactions or select expenditure transactions based on the approved award budget cost categories. This non-statistical sample design does not allow for the projection of the test results to the universes from which the samples were selected.

A total of \$641,695 was awarded through the Office of Justice Programs to the Philadelphia District Attorney's Office (PDAO), of which we audited \$609,694 that the PDAO had expended and that was reimbursed through approved funding requests as of March 2015. Our audit concentrated on, but was not limited to the time of the initial award in October 2010, through the end of our field work in May 2015.

We tested compliance with what we considered to be the most important conditions of the award. Unless otherwise stated in our report, we used the OJP Financial Guide as our primary criteria for compliance testing and relied on the award documents. The Financial Guide also cites criteria contained in the Code of Federal Regulations: 28 CFR § 66, Uniform Administrative Requirements for Grants and is included under the Special Conditions of the award documents. In those instances where the City of Philadelphia imposed more stringent criteria and requirements than those included in the OJP Financial Guide and overall award terms and conditions, we applied those guidelines in performing our audit. We also reviewed the City of Philadelphia Single Audit Reports for fiscal years 2011, 2012, and 2013.

In conducting our audit, we reviewed the internal controls of the PDAO's financial and accounting management information system specific to the management of DOJ funds during the award period under review. However, we did not test the reliability of the PDAO's financial and accounting management system as a whole. We also performed limited tests of source documents to assess the accuracy and completeness of Federal Financial Reports, and progress reports.

SCHEDULE OF DOLLAR-RELATED FINDINGS

QUESTIONED COSTS ⁴	AMOUNT	PAGE
<u>Unallowable Costs</u>		
Contracts and Consultant's – Lack of prior approval by Law Department (local requirement)	\$310,670	8
Contracts and Consultant's - Exceeding OJP consultancy rates	198,080	8
Contracts and Consultants- Non-competitively bid and lacking local sole-source approvals	266,400	8
Total Unallowable Costs	\$775,150	
<u>GROSS QUESTIONED COSTS</u>	\$775,150	
<i>Less Duplicate Costs⁵</i>	(464,480)	
NET QUESTIONED COSTS	\$310,670	

⁴ 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.

⁵ Some costs may be questioned for more than one reason. Net questioned costs exclude the duplicate amount associated with exceeding OJP consultancy rates, non-competitive bidding, and lacking local sole-source approvals.

PHILADELPHIA DISTRICT ATTORNEY'S OFFICE RESPONSE TO
THE DRAFT AUDIT REPORT⁶



DISTRICT ATTORNEY'S OFFICE
THREE SOUTH PENN SQUARE
PHILADELPHIA, PENNSYLVANIA 19107-3499
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R. SETH WILLIAMS
DISTRICT ATTORNEY

November 25, 2015

Mr. Thomas Puerzer
Regional Audit Manager
Philadelphia Regional Audit Office
Office of the Inspector General
U.S. Department of Justice
701 Market Street, Suite 201
Philadelphia, Pennsylvania 19106

Re: PDAO response to OIG audit report for OJP cooperative agreement 2010-DB-BX-K083

Dear Mr. Puerzer:

The District Attorney's Office of Philadelphia (PDAO) has received and reviewed the draft audit report concerning the Office of Justice Programs (OJP) cooperative agreement 2010-DB-BX-K083. The PDAO is indebted to the OJP and its Bureau of Justice Assistance for this grant, which has supported the PDAO's ongoing adoption of a performance-based prosecution model. Specifically, the grant has funded improvements to the PDAO's ability to collect, analyze, and report data that, among other things, have enabled the PDAO to participate in data-driven programs like Gun Stat and Focused Deterrence¹ that have successfully targeted gun-related crime and recidivism in high-crime areas.

The PDAO appreciates the opportunity that the audit has provided to review its experience with this grant, the first federal grant of its size and scope that the PDAO has received under my administration. Our responses to the draft audit report's recommendations are below.

¹ For more information about the Gun Stat program, please see <http://uncrisis.org/2013/06/29/mayors-group-honors-philadelphia-for-reducing-shootings-with-gunstat-program/>. More information about the Focused Deterrence program is available at http://articles.philly.com/2013-11-04/news/43630805_1_gang-members-law-enforcement-crew-members.

⁶ Attachments to this response are not included in this final report.

PDAO'S COMMENTS
CONCERNING THE DRAFT AUDIT REPORT'S RECOMMENDATIONS

1. *Ensure PDAO implements and adheres to documented policies and procedures that place greater accountability and safeguards over federal funds with respect to compliance with the City of Philadelphia imposed policies and requirements that are more restrictive than those under OJP grant guidelines. This includes compliance with both OJP grant specific contracting requirements and City of Philadelphia imposed criteria and mandates when making use of non-competitive, sole source contracting for consultants.*

The PDAO disagrees with this recommendation's assumption that it needed the City of Philadelphia's approval before entering the contracts at issue. Simply put, the assumption is wrong. No prior approval from the City was required. The PDAO historically has not been subject to the City's oversight in contracting matters.² Thus, the PDAO did not improperly fail to obtain the City's or Law Department's approval before entering contracts during the grant period,³ and the expenditures that the OIG has deemed unallowable for lack of Law Department approval were, in fact, allowable expenditures.⁴

The PDAO does not agree that there were unallowable expenditures due to contracts that supposedly were not competitively bid or purportedly lacked sole source approval. The PDAO properly entered the 4 contracts at issue:

- The PDAO's \$65,000 and \$32,000 contracts with IQ Business Group and \$44,400 contract with SAP Public Services did not need advance sole source approval. According to the applicable OJP Financial Guide, because each of these contracts was for an amount that did not exceed \$100,000, the PDAO did not need to submit a Grant Adjustment Notice (GAN) requesting sole source approval before entering them.
- The PDAO's \$125,000 contract with IQ Business Group required sole source approval, which the PDAO requested and obtained retroactively through a GAN.

² This practice is consistent with the PDAO's separate and independent status as a law-enforcement entity. It also is reflected in the City's policies, which do not require the PDAO to submit to its oversight when entering contracts or otherwise to comply with the contracting provisions of City law. For example, the City's "Contract Management Policies and Procedures" explicitly exempt the PDAO from processing its professional services contracts through the City's computerized contracting system. Likewise, the City has consistently excluded the PDAO from the information and training sessions it has held on compliance with the Home Rule Charter's and Philadelphia Code's contracting requirements. Before the instant audit, neither the City nor its Law Department had claimed that the PDAO needed its approval to enter contracts.

³ The PDAO and the City have met and are communicating about how to resolve this new interpretation of the City's and PDAO's relationship in contracting matters.

⁴ The City was fully aware of the 6 contracts at issue because the PDAO submitted encumbrance documents to the City for the City to disburse the contractual amounts.

(See Appendix A: GAN, approved May 9, 2013.) The PDAO did not seek reimbursement from the grant award until after it received sole source approval for the contract.

Accordingly, because the PDAO either did not need prior sole source approval for the contracts, or retroactively obtained the required approval, the \$266,400 of supposedly unallowable expenditures were actually allowable expenditures.

2. *Ensure PDAO implements and adheres to documented policies and procedures that ensure capital property and equipment is accurately classified and reported under the award budget.*

The PDAO disagrees with this recommendation's underlying conclusion that the PDAO acted improperly. In mistakenly classifying certain "equipment" items (computer hardware, software, and computer tables) as "supplies" in the award budget, the PDAO did not attempt to deceive either the City or the BJA, or otherwise act improperly.⁵ The City was aware of the nature of the items because it required the PDAO to identify them before purchasing them. To the extent the OIG has concerns about oversight and monitoring of the items, the PDAO can readily account for their location and past and present use should the OIG deem it necessary.

3. *Ensure PDAO implements and adheres to documented policies and procedures that ensure budget Grant Adjustment Notices fully comply with OJP requirements, including getting advance OJP approval for budget modifications when required before the obligation or expenditure of grant funding.*

The PDAO disagrees with this recommendation's underlying conclusion that it acted improperly. The PDAO did not enter the contract at issue without first informing the BJA of the necessity and urgency involved, and obtaining the BJA's informal approval, and the PDAO later obtained formal sole source approval at the earliest opportunity. The PDAO did not seek reimbursement from the grant award until after it received formal sole source approval.

The contract involved IQ Business Group, an IT consulting firm with which the PDAO and other Philadelphia criminal justice stakeholders had a preexisting relationship. IQ Business Group was already creating a document management system for the PDAO, the Philadelphia

⁵ The PDAO's inadvertent mistake stemmed from its use of the BJA's definition of "equipment" as property having an acquisition cost of \$5,000 or more per unit; none of the items the PDAO needed cost \$5,000 or more, so it classified them as supplies. The PDAO should have used the City's definitions for these terms, although City policy does not provide much clarity about exactly what these classifications are. Equipment is defined in City policies, while supplies are not. The City's guidelines also do not distinguish between equipment and supplies on the basis of cost. (See Appendix B: June 17, 2015 e-mail from ██████████ Director of the City's Services, Supplies and Equipment Department, to ██████████, PDAO Procurement Officer, in which the City confirmed that "there is no dollar threshold nor written policy in regards to what distinguishes supplies from equipment.")

courts system, and other criminal justice stakeholders, and the \$125,000 sole source contract at issue would permit that work to continue. Before making a commitment, the PDAO informed its BJA contact (██████████) about the proposed contract and the time pressures under which it was operating, and obtained oral permission to proceed. The PDAO then sought and received retroactive formal sole source approval for the contract. The PDAO submitted a GAN seeking this retroactive approval, which the OJP granted on the basis of the expertise of the contractor, time constraints, and uniqueness, among other things. (See Appendix A: GAN, approved May 9, 2013.) At no time did the PDAO act without the BJA's knowledge and approval.

4. *Ensure PDAO implements and adheres to documented policies and procedures that ensure consultant rates above the allowable hourly or daily rate fully comply with OJP requirements.*

The PDAO disagrees with this recommendation's underlying conclusion that it improperly contracted with various IT consulting firms. In entering the contracts at issue, the PDAO followed OJP guidelines. Under these guidelines, the PDAO did not need prior approval for contracts resulting from competitive bidding. When the PDAO was uncertain how to apply the guidelines, it sought and relied on advice from its BJA contact. The BJA was fully aware of how the PDAO was proceeding before grant funds were expended. Specifically:

- **Keystone Computer Associates:** The PDAO's \$16,530 and \$27,740 contracts with Keystone resulted from Keystone's participation in a competitive bidding process through the City's Office of Information Technology. According to the OJP Financial Guide, these contracts did not require prior approval because they were obtained through competitive bidding.
- **AADI Systems:** Before entering the \$12,410 contract with AADI, the PDAO interviewed various IT consultants and firms. It determined that AADI was uniquely capable of performing the required work because AADI's primary employee had originally helped develop the PDAO computer system that needed improvement. The PDAO informed its BJA contact (██████████) of its intent to contract with AADI and asked whether further justification was needed. (See Appendix C: November 9-10, 2011 e-mail exchange between BJA contact ██████████ ██████████ ██████████) After the PDAO provided the BJA contact with additional information, he confirmed that the PDAO could enter the contract without formally seeking prior approval. (See Appendix C.) Regardless of the OIG's different, retrospective interpretation of the OJP guidelines, the PDAO acted entirely properly in relying on its BJA contact's advice at the time it contracted with AADI.
- **IQ Business Group:** The PDAO entered its \$65,000 and \$32,000 contracts with IQ Business Group in reliance on its BJA contact's advice that it was unnecessary to obtain prior approval for such contracts (i.e., where the BJA budget already allocated funds for the contract's full amount and did not require calculating the expenditure based on the number of hours the consulting firm actually worked). (See Appendix C.)

- SAP Public Services: The PDAO entered its \$44,400 contract with SAP Public Services in reliance on its BJA contact's advice that it was unnecessary to obtain prior approval for such contracts (i.e., where the BJA budget already allocated funds for the contract's full amount and did not require calculating the expenditure based on the number of hours the consulting firm actually worked). (See Appendix C.)

5. *Remedy \$310,670 in unallowable expenditures for failure to obtain advance approval in using non-competitive, sole source contracting for consultants. This total also includes \$198,080 in unallowable expenditures for consultants paid above the allowable hourly or daily rate without advance OJP approval. Additionally, this total includes \$266,400 in unallowable expenditures for not competitively bid and lacking local source approvals.*

The PDAO does not agree that it generated \$310,670 in unallowable expenditures. Please see the PDAO's response to Recommendation No. 4 (in contracting with consultants, the PDAO followed OJP guidelines and relied on advice from its BJA contact in interpreting those guidelines). Please see the PDAO's response to Recommendation No. 1 (because the PDAO either did not need prior sole source approval for certain contracts, or retroactively obtained the required approval, the \$266,400 at issue were, in fact, allowable expenditures).

6. *Ensure PDAO implements and adheres to documented policies and procedures to ensure that periodic progress reports are accurate, complete and provide full disclosure of award progress to date and reasonable expectations as to remaining work that still needs to be accomplished.*

The PDAO disagrees with this recommendation's underlying conclusion that the PDAO's periodic progress reports were not accurate and complete, and failed to provide full disclosure. The PDAO submitted 10 progress reports during the grant period. All 10 reports were approved and accepted by the OJP's Program Office Grant Manager. Each report reflected the PDAO's contemporaneous assessment of its progress, accomplishments, difficulties, and need for BJA assistance⁶ in the applicable reporting period. The OJP had the opportunity to review the reports and ask for additional information or clarification. In the 2 instances in which the OJP sought more information or clarification of a progress report, the PDAO cooperated fully and provided the requested information, and the reports were subsequently accepted.

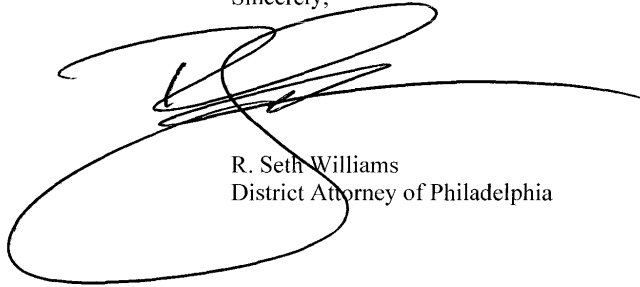
7. *Ensure PDAO implements and adheres to documented policies and procedures that ensure the routine monitoring of compliance with award special conditions.*

The PDAO disagrees with this recommendation's underlying conclusion that the PDAO did not comply with the award's special conditions. Please see the PDAO's responses to Recommendation Nos. 1-5.

⁶ In 6 of the 10 progress reports, the PDAO asked for the BJA's help to address the problems that had prevented it from reaching its goals in the reporting period. The BJA did not respond to these requests for assistance.

The District Attorney's Office will continue to cooperate fully with the OJP to resolve the issues raised in the draft audit report. Please let us know if you need additional information or if you have other questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Seth Williams', with a large, sweeping flourish extending to the right and a large loop at the bottom.

R. Seth Williams
District Attorney of Philadelphia

Enclosures

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

DEC - 3 2015

Washington, D.C. 20531

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

FROM: *for* Ralph E. Martin *Ralph E. Martin*
Director

SUBJECT: Response to the Draft Audit Report, *Audit of the Office of Justice Programs Cooperative Agreement Administered by the Philadelphia District Attorney's Office, Philadelphia, Pennsylvania*

This memorandum is in reference to your correspondence, dated October 28, 2015, transmitting the above-referenced draft audit report for the Philadelphia District Attorney's Office (PDAO). We consider the subject report resolved and request written acceptance of this action from your office.

The draft report contains **seven** recommendations and **\$310,670¹** in net 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 ensure PDAO implements and adheres to documented policies and procedures that place greater accountability and safeguards over federal funds with respect to compliance with the City of Philadelphia imposed policies and requirements that are more restrictive than those under OJP grant guidelines. This includes compliance with both OJP grant specific contracting requirements and City of Philadelphia imposed criteria and mandates when making use of non-competitive, sole source contracting for consultants.**

OJP agrees with the recommendation. We will coordinate with PDAO to obtain a copy of written policies and procedures, developed and implemented, to ensure that an effective internal control system is established, for adhering to Federal grant guidelines and the City of Philadelphia contracting requirements, when making use of non-competitive, sole source procurements for consultants.

¹ Some costs were questioned for more than one reason. Net questioned costs exclude the duplicate amounts.

OJP agrees with the recommendation. We will coordinate with PDAO to obtain a copy of written policies and procedures, developed and implemented, to ensure that an effective internal control system is established, for adhering to Federal grant guidelines and the City of Philadelphia contracting requirements, when making use of non-competitive, sole source procurements for consultants.

2. **We recommend that OJP ensure that PDAO implements and adheres to documented policies and procedures that ensure capital property and equipment is accurately classified and reported under the award budget.**

OJP agrees with the recommendation. We will coordinate with PDAO to obtain a copy of written policies and procedures, developed and implemented, to ensure that its acquisitions of capital property and equipment are accurately classified and reported under the appropriate budget category.

3. **We recommend that OJP ensure that PDAO implements and adheres to documented policies and procedures that ensure budget Grant Adjustment Notices fully comply with OJP requirements, including getting advance OJP approval for budget modifications when required before the obligation or expenditure of grant funding.**

OJP agrees with the recommendation. We will coordinate with PDAO to obtain a copy of written policies and procedures, developed and implemented, to ensure that effective internal controls are established for administering Federal grants, including obtaining advanced OJP approval for budget modifications within the required time period.

4. **We recommend that OJP ensure that PDAO implements and adheres to documented policies and procedures that ensure consultant rates above the allowable hourly or daily rate fully comply with OJP requirements.**

OJP agrees with the recommendation. We will coordinate with PDAO to obtain a copy of written policies and procedures, developed and implemented, to ensure that consultant rates are in compliance with the U.S. Department of Justice Financial Guide.

5. **We recommend that OJP remedy the \$310,670 in unallowable expenditures for failure to obtain advance approval in using non-competitive, sole-source contracting for consultants. This total also includes \$198,080 in unallowable expenditures for consultants paid above the allowable hourly or daily rate without advance OJP approval. Additionally, this total includes \$266,400 in unallowable expenditures for not competitively bid and lacking local source approvals.**

OJP agrees with the recommendation. We will coordinate with PDAO to remedy the \$310,670 in net questioned consultant costs charged to cooperative agreement number 2010-DB-BX-K083.

6. **We recommend that OJP ensure that PDAO implements and adheres to documented policies and procedures to ensure that periodic progress reports are accurate, complete and provide full disclosure of award progress to date and reasonable expectations as to remaining work that still needs to be accomplished.**

OJP agrees with the recommendation. We will coordinate with PDAO to obtain a copy of written policies and procedures, developed and implemented, to ensure that future semi-annual progress reports are accurate and complete; provide full disclosure of award progress, to date; and describe the remaining work to be accomplished.

7. **We recommend that OJP ensure that PDAO implements and adheres to documented policies and procedures that ensure the routine monitoring of compliance with award special conditions.**

OJP agrees with the recommendation. We will coordinate with PDAO to obtain a copy of written policies and procedures, developed and implemented, to ensure that compliance with award special conditions is routinely monitored.

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: Maureen A. Henneberg
Deputy Assistant Attorney General
for Operations and Management

Anna Martinez
Senior Policy Advisor
Office of the Assistant Attorney General

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

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OJP Executive Secretariat
Control Number IT20151104124238

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

The OIG provided a draft of this audit report to the Philadelphia District Attorney's Office (PDAO) and the Office of Justice Programs (OJP). The PDAO's response is included as Appendix 3 and OJP's response is included as Appendix 4 of this final report. Because OJP agreed with all of our recommendations and discussed the specific actions that will be taken to address each of our findings, we consider all the recommendations resolved. The PDAO did not agree with any of our recommendations, therefore we address the PDAO's position in our analysis of each recommendation below. The following provides the OIG analysis of the responses and summary of actions necessary to close the report.

Recommendations:

- 1. Ensure the PDAO implements and adheres to documented policies and procedures that place greater accountability and safeguards over federal funds with respect compliance with the City of Philadelphia imposed policies and requirements that are more restrictive than those under OJP grant guidelines. This includes compliance with both OJP grant specific contracting requirements and City of Philadelphia imposed criteria and mandates when making use of non-competitive, sole source contracting for consultants.**

Resolved. OJP agreed with this recommendation. In its response, OJP said it will coordinate with the PDAO to obtain a copy of written policies and procedures, developed and implemented, to ensure that an effective internal control system is established for adhering to federal grant guidelines and the City of Philadelphia contracting requirements when making use of non-competitive, sole source procurements for consultants.

In its response, the PDAO disagreed with the recommendation. The PDAO stated:

(n)o prior approval from the City was required. The PDAO historically has not been subject to the City's oversight in contracting matters This practice is consistent with the PDAO's separate and independent status as a law enforcement entity. It also is reflected in the City's policies, which do not require the PDAO to submit to its oversight when entering contracts or otherwise to comply with the contracting provisions of City Law. For example, the City's "Contract Management Policies and Procedures" explicitly exempt the PDAO from processing its professional services contracts through the City's computerized contracting system. Thus, the PDAO did not improperly fail to obtain the City's or Law Department's approval before entering contracts during the grant period, and the expenditures that the OIG has deemed unallowable for lack of Law Department approval were, in fact, allowable expenditures.

Despite this claim by the PDAO, the City's Law Department confirmed to us in our discussions that as an agency of the City of Philadelphia, the PDAO is required to adhere to the contracting requirements of the City's Home Rule Charter. In 1951 Pennsylvania voted to adopt an amendment to the state constitution to consolidate the City and County of Philadelphia and bring "county agencies", including the PDAO, under the purview of the Home Rule Charter.⁷ As such, the PDAO is identified in the City of Philadelphia's organization chart and is funded through the City budget, thereby also indicating that it is under the purview of City rules.⁸ We note that the PDAO did not provide us with any evidence that the PDAO was exempt from following the contracting requirements of the City's Home Rule Charter. As a result, we maintain our recommendation and question the PDAO's decision to not abide by the City's Home Rule Charter requirement to issue a public notice of contracting or bid opportunity for non-competitive contracts for professional services whose value is anticipated to exceed \$32,000. The PDAO response says that the City Law Department and the PDAO are now communicating to address the relationship between the City and the PDAO in contracting matters. In our view this dialogue will help further clarify the specific Home Rule Charter contractual requirements' applicability to the PDAO.

This recommendation can be closed when we receive documentation demonstrating that the PDAO has implemented and adheres to policies and procedures outlined in this recommendation, or the PDAO provides evidence that clearly demonstrates its exemption from the Philadelphia Home Rule Charter.

2. Ensure that the PDAO implements and adheres to documented policies and procedures that ensure capital property and equipment is accurately classified and reported under the award budget.

Resolved. OJP agreed with this recommendation. In its response, OJP said it will coordinate with the PDAO to obtain a copy of written policies and procedures, developed and implemented, to ensure that its acquisitions of capital property and equipment are accurately classified and reported under the appropriate budget category.

⁷ The Constitution of the City of Philadelphia states "In Philadelphia all county offices are hereby abolished, and the city shall henceforth perform all functions of county government within its area through officers selected in such manner as may be provided by law." Constitution of the City of Philadelphia, Article IX, Local Government, § 13. Abolition of county offices in Philadelphia.

⁸ City of Philadelphia, *City of Philadelphia Organization Chart*, <http://www.phila.gov/pdfs/CityOrganizationChart.pdf> (accessed January 26, 2015).

In its response, the PDAO stated that it:

disagreed with the recommendation's underlying conclusion that the PDAO acted improperly. In mistakenly classifying certain "equipment" items (computer hardware, software, and computer tables) as "supplies" in the award budget, the PDAO did not attempt to deceive either the City or the BJA, or otherwise act improperly.

However, this audit does not conclude that the PDAO attempted to deceive the City or BJA. The audit report concludes that the PDAO did not comply with the capital property and equipment requirement, which has implications for OJP's oversight and the success of the project. In spite of the PDAO's disagreement, it acknowledged that it should have used the City's definitions for these items. Moreover, OJP guidance states that an organization should use its own capitalization policy for classification of a nonexpendable item such as equipment. Had the PDAO used the City's definition for these items to complete the award budget, the supplies would have been accurately classified as equipment. Implementing adequate policies and procedures and adhering to them should minimize the risk of the PDAO repeating this mistake.

This recommendation can be closed when we receive documentation demonstrating that the PDAO has implemented and adheres to policies and procedures described in the recommendation.

3. Ensure the PDAO implements and adheres to documented policies and procedures that ensure budget Grant Adjustment Notices fully comply with OJP requirements, including getting advance OJP approval for budget modifications when required before the obligation or expenditure of grant funding.

Resolved. OJP agreed with this recommendation. In its response, OJP said it will coordinate with the PDAO to obtain a copy of written policies and procedures, developed and implemented, to ensure that effective internal controls are established for administering federal grants, including obtaining advanced OJP approval for budget modifications within the required time period.

In its response, the PDAO stated that it disagreed with the recommendation's underlying conclusion that it acted improperly. The PDAO stated that it did not enter the contract at issue without first informing the BJA of the necessity and urgency involved, obtaining BJA's informal approval, and then later obtaining formal sole source approval at the earliest opportunity. The PDAO also stated that, before making a commitment, it informed its BJA contact about the proposed contract and the time pressures under which it was operating, and obtained oral permission to proceed.

We reviewed the OJP and PDAO grant documentation we were provided and found no evidence indicating that BJA provided PDAO with verbal approval to proceed with the sole-source contract. We asked the BJA contact identified in

PDAO's response whether he gave the PDAO informal approval and oral permission to enter into the sole-source contract before obtaining OJP's written approval. The BJA contact stated that he had no recollection of providing such approval, and that such approval is not something he would have done. In addition, we asked BJA about PDAO's assertions that it received verbal approval to enter into a sole-source contract. BJA stated that it only grants approval in the manner allowed by grant rules. Those grant rules, which the PDAO agreed to in its acceptance of the award, require approval to be provided in written format prior to the obligation of funds. The BJA also stated that the BJA contact cited in PDAO's response neither had the authority to deviate from the established grant management policies, nor the authority to grant informal approval.

Further, the PDAO's response did not provide evidence to support why the PDAO failed to adhere to the grant specific compliance requirements, and did not provide evidence to substantiate the time constraints and pressing urgency it contends provided justification for circumventing the requirement for written OJP approval. In fact, the original 36-month grant term was extended twice by BJA after the PDAO requested 24 additional months, for a total of 5 years, to implement the project. Moreover, OJP guidance and the Special Conditions included as part of the grant award make it clear that OJP written approval is required before the grantee can obligate grant funds.

In this instance, our audit disclosed that the PDAO formally executed a contractual agreement with an IT consulting firm on a sole-source basis that also required a budget modification to fund the IT consultant. From our review of the documentation the PDAO provided, we determined the IT consultant started working on the project on March 1, 2013, yet the PDAO waited until April 17, 2013 to submit a Grant Adjustment Notice (GAN) to BJA. The BJA conducted follow up with the PDAO and gave final approval to the PDAO on May 6, 2013, more than 2 months after the IT consultant started working on the project. We followed up with BJA, and BJA confirmed that the GAN cited by the PDAO revealed no aspect that its approval applied retroactively, therefore the BJA refuted the PDAO's contention that the GAN approved the costs obligated prior to the GAN's issuance. By not complying with grant requirements the PDAO placed grant funds at risk of unallowable use.

This recommendation can be closed when we receive documentation demonstrating that the PDAO has implemented and adheres to policies and procedures described in the recommendation.

4. Ensure the PDAO implements and adheres to documented policies and procedures that ensure consultant rates above the allowable hourly or daily rate fully comply with OJP requirements.

Resolved. OJP agreed with this recommendation. In its response, OJP said it will coordinated with the PDAO to obtain a copy of written policies and

procedures, developed and implemented, to ensure that consultant rates are in compliance with the U.S. Department of Justice OJP Financial Guide.

In its response, the PDAO stated that it:

disagreed with the recommendation's underlying conclusion that it improperly contracted with various IT consulting firms. In entering the contracts at issue, the PDAO followed OJP guidelines. Under these guidelines, the PDAO did not need prior approval for contracts resulting from competitive bidding. When the PDAO was uncertain how to apply the guidelines, it sought and relied on advice from its BJA contact.

However, contrary to the PDAO's assertion, the agreements executed by the PDAO were generally for sole source IT consulting services that were not subject to competitive bidding. Additionally, the agreements cited consultant rates that consistently exceeded allowable thresholds according to OJP guidance.

The PDAO submitted an e-mail conversation it says it relied on in determining that the allowable consultant rates were applicable for these contracts. However, the PDAO e-mail dialogue did not ever disclose to BJA that these contracts were not competitively bid and were consistently referred to as IT consulting agreements complete with required time and effort reporting and generally included hourly rates. We further note, based on our review of the e-mail conversation, that there appeared to be a misunderstanding between the PDAO and the BJA representative on whether the vendor in question was a contractor or a consultant and, consequently, a misunderstanding on how the payment to the vendor should be treated.

In our view these contractual arrangements were consulting agreements as the executed binding contractual documents clearly state in the documents that the PDAO cites in its response. The PDAO response that these contracts were competitively bid is without merit as we determined during our audit that these contracts were sole source arrangements. The fact that the consultant was used in the past to perform work on the project did not render the contract as competitively bid. Moreover, a PDAO official confirmed in an e-mail to us during the audit that the contracts were stand-alone arrangements that represented separate consulting service agreements. That same PDAO official also provided us with time and efforts reports supporting the work performed by the IT consultant, consistent with OJP requirements for the use of consultants.

In looking at the OJP guidance for the definition of a consultant - an individual that provides professional advice or services - it also says that the consultant work product should be well defined and documented. Taking the evidence gathered from our audit and assessing it in totality it is clear to us that the PDAO met the consultant definition and should have fully disclosed the nature of the arrangement and strictly adhered to the OJP requirements for contracted professional IT consulting services, including seeking advance approval from BJA to exceed allowable rates of compensation.

The recommendation can be closed when we receive documentation demonstrating that the PDAO has implemented and adheres to policies and procedures described in the recommendation.

- 5. Remedy \$310,670 in unallowable expenditures for failure to obtain advance approval in using non-competitive, sole source contracting for consultants. This total also includes \$198,080 in unallowable expenditures for consultants paid above the allowable hourly or daily rate without advance OJP approval. Additionally, this total includes \$266,400 in unallowable expenditures for not competitively bid and lacking local source approvals.**

Resolved. OJP agreed with this recommendation. In its response, OJP said it will coordinate with the PDAO to remedy the \$310,670 in net questioned costs charged to cooperative agreement number 2010-DB-BX-K083.

In its response, the PDAO disagreed with our recommendation. The PDAO referenced back to its response to recommendation numbers 1 and 4 as reasons for not agreeing with this recommendation. However, we reiterate that all of the evidence we reviewed indicated that the PDAO was subject to the Home Rule Charter bidding requirements, as affirmed by the City of Philadelphia Law Department, Organization Chart, Budget, and Constitution. Further, OJP guidance and the Special Conditions included as part of the grant award make it clear that advance, written approval is required before the grantee can obligate grant funds for a non-competitive, sole-source contract for consultants. In addition, the BJA confirmed that the PDAO was not permitted to deviate in any way from all attendant grant management policies as well as all applicable Special Conditions to the award.

The agreements executed by the PDAO were generally for sole source IT consulting services that were not subject to competitive bidding. Additionally, the agreements cited consultant rates that consistently exceeded allowable thresholds according to OJP guidance. Taking this evidence gathered from our audit and assessing it in totality, it is clear to us that the agreements executed by the PDAO were contracts for professional IT consulting services and should have strictly adhered to the OJP requirements for contracted professional IT consulting services, including seeking advance approval from BJA to exceed allowable rates of compensation. Accordingly, for the same reasons stated in recommendations 1 and 4, we maintain this recommendation.

This recommendation can be closed when we receive documentation demonstrating that the PDAO has remedied \$310,670 in unallowable expenditures.

- 6. Ensure the PDAO implements and adheres to documented policies and procedures to ensure that periodic progress reports are accurate, complete, and provide full disclosure of award progress to date and**

reasonable expectations as to remaining work that still needs to be accomplished.

Resolved. OJP agreed with this recommendation. In its response, OJP said it will coordinate with the PDAO to obtain a copy of written policies and procedures, developed and implemented, to ensure that future semi-annual progress reports are accurate and complete; provide full disclosure of award progress, to date; and describe the remaining work to be accomplished.

In its response, the PDAO stated that it disagreed with this recommendation's underlying conclusion that the PDAO's periodic progress reports were not accurate and complete, and failed to provide full disclosure. The PDAO stated that each report reflected the PDAO's contemporaneous assessments of its progress, accomplishments, difficulties, and need for BJA assistance in the applicable reporting period and were approved and accepted by OJP's Program Office Grant Manager. The PDAO added that OJP had the opportunity to review the reports and ask for additional information or clarification.

As we noted in our report, the PDAO's periodic progress reports did not provide sufficient information to BJA, including the challenges that were impeding its progress, what needed to be done to correct those issues and the timeframes associated with those efforts, and what grant-funded work still remained. The performance metrics section of the progress report allows for a narrative discussion at the end of the report, but the PDAO generally did not elaborate beyond responding to the standard metrics requested. Therefore, we maintain our finding. Further, the PDAO's statement that OJP had an opportunity to ask for additional information and did not does not mitigate the fact that the progress reports were not complete and accurate.

This recommendation can be closed when we receive documentation demonstrating that the PDAO has implemented and adheres to policies and procedures as described in the recommendation.

7. Ensure the PDAO implements and adheres to documented policies and procedures that ensure the routine monitoring of compliance with award special conditions.

Resolved. OJP agreed with this recommendation. In its response, OJP said it will coordinate with the PDAO to obtain a copy of written policies and procedures, developed and implemented, to ensure that compliance with award special conditions is routinely monitored.

In its response, the PDAO disagreed with the recommendation. The PDAO referenced back to its responses to recommendation number 1 through 5. However, we reiterate that all of the evidence we reviewed indicated that the PDAO was subject to the Home Rule Charter bidding requirements, as affirmed by the City of Philadelphia Law Department, Organization Chart, Budget, and Constitution. Further, the PDAO must comply with award special conditions that

state an organization should use its own capitalization policy for classification of a nonexpendable item such as equipment. Moreover, those award special conditions make it clear that advance, written OJP approval is required before the grantee can obligate grant funds for a non-competitive, sole-source contract for consultants, and that advance approval from OJP is also necessary to exceed allowable rates of consultant compensation. Finally, the award special conditions require complete and accurate PDAO progress reporting that provides sufficient information and full disclosure to BJA, including challenges that are impeding progress, what needs to be done to correct those issues and the timeframes associated with those efforts, and what grant-funded work still remains, even in the absence of a request from BJA for additional information or clarification. In addition, the BJA confirmed to us in writing that the PDAO was not permitted to deviate in any way from all Special Conditions included with the award. Accordingly, for the same reasons in our responses to recommendations 1 through 5, we maintain this recommendation.

This recommendation can be closed with we receive documentation demonstrating that the PDAO has implemented and adheres to policies and procedures that ensure the routine monitoring of compliance with award special conditions.

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