

EXECUTIVE OFFICE OF THE GOVERNOR



OFFICE OF THE CHIEF INSPECTOR GENERAL

AUDIT OF SELECTED ADMINISTRATIVE AND OPERATIONAL ACTIVITIES OF
THE FLORIDA DEVELOPMENTAL DISABILITIES COUNCIL

REPORT No. 2008-6
JUNE 23, 2008



CHARLIE CRIST
GOVERNOR

STATE OF FLORIDA

Office of the Governor

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June 23, 2008

The Honorable Charlie Crist
Governor of Florida
The Capitol
Tallahassee, FL 32399-0001

Mr. Enrique Escallon, Chairperson
Florida Developmental Disabilities Council
124 Marriott Drive, Suite 203
Tallahassee, FL 32301-2981

Dear Governor Crist and Mr. Escallon:

Enclosed is Audit Report No. 2008-6 detailing the findings from the audit of selected administrative and operational activities of the Florida Developmental Disabilities Council. The Council's response to the audit findings and recommendations is included in this report.

I am available to discuss this report with you at your convenience.

Sincerely,

Melinda M. Miguel
Chief Inspector General

MMM/kbm

Enclosure

cc: Eric Eikenberg, Chief of Staff
Debra Dowds, Council Executive Director
David Martin, Auditor General

Audit of Selected Administrative and Operational Activities of the Florida Developmental Disabilities Council

INTRODUCTION

The Florida Developmental Disabilities Council, Inc. (Council) is a non-profit corporation fully funded through a grant authorized by the U.S. Department of Health and Human Services under the Federal Developmental Disabilities Assistance and Bill of Rights Act (Act). The grant in the amount of \$3,562,124, is awarded directly to the Council and is not accounted for through the State's Treasury and accounting records. Each state in the nation has a Developmental Disabilities Council that functions to increase the independence, productivity, inclusion, and community integration of people with developmental disabilities.

In accordance with the Act, state Councils are composed of family members and individuals with developmental disabilities (60%), and representatives of state, local and non-governmental agencies that administer funds under Federal laws related to individuals with disabilities (40%). In Florida, there are twenty-nine members on the Council who are appointed by the Governor.

Section 393.002, Florida Statutes, requires the Governor to designate, by executive order, a nonprofit corporation as the agency to receive Federal funds to implement, on behalf of the State of Florida, Part B of the Developmental Disabilities Assistance and Bill of Rights Act. The Council carries out the State's responsibilities under Executive Order 95-478, and is also subject to certain State and Federal regulations, including Title 2, Part 224, Code of Federal Regulations, *Cost Principles for State, Local and Indian Tribal Governments* (U.S. Office of Management and Budget (OMB) Circular A-87) as specified in the grant award; Title 45, Part 74, Code of Federal Regulations, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-*

Profit Organizations (OMB Circular A-110); and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

OVERALL CONCLUSION

Our review disclosed improvements were needed in the following areas:

1) Florida Sunshine Law, 2) Allowable Travel Expenditures, and 3) Potential Conflicts of Interest in Contracting.

COMMENTS

The Office of the Chief Inspector General extends our appreciation to the management and staff of the Florida Developmental Disabilities Council, Agency for Persons with Disabilities, and Agency for Health Care Administration for their assistance and cooperation during this audit.

PURPOSE, SCOPE & METHODOLOGY

In accordance with the 2007-2008 annual work plan approved by Governor Charlie Crist for the Chief Inspector General's Office, we conducted this audit to assess the appropriateness of selected transactions and activities of the Council and compliance with applicable Federal and State laws.

Our audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* published by the Institute of Internal Auditors. We performed the following procedures for the audit period of October 1, 2006 through January 31, 2008:

- reviewed Executive Order 95-478, applicable Federal regulations, OMB Circulars and Florida Statutes;
- reviewed Council bylaws, policies and procedures;

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- reviewed records pertaining to Council meetings;
- examined a sample of 39 travel vouchers;
- examined documentation in three procurement packages;
- reviewed expenditure detail and other documentation associated with the 2007 Inclusion Summit; and
- performed other tests as appropriate.

FINDINGS AND RECOMMENDATIONS

1 - FLORIDA SUNSHINE LAW

The Council is subject to the provisions of Section 286.011, Florida Statutes, the Florida Sunshine Law. The three basic requirements of the Florida Sunshine Law are: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of these meetings must be given; and (3) minutes of the meetings must be taken and made available for public inspection. The Government-in-the-Sunshine Manual states, "The Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to Section 286.011, Florida Statutes. Instead, the law is applicable to *any* gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which *foreseeable action* will be taken by the public board or commission."

We reviewed a sample of meetings attended by Council members to determine compliance with the Florida Sunshine Law requirements. We reviewed records for 17 meetings, including the 2007 Inclusion Summit, where two or more Council

members attended the meetings and the meetings' objectives were to develop plans/strategies to be recommended for action by the full Council. Although minutes were maintained, staff had not posted the appropriate notice for four of these meetings.

Although the Council's Legal Counsel had notified the Executive Director in a 2003 memorandum that the Florida Sunshine Law applies to meetings of the Council, staff indicated they were unaware that meetings held to develop recommended strategies were included in that requirement.

We commend the Council on the following action: In a memorandum dated May 14, 2008, the Executive Director notified us that "recognizing the importance of the posting of both meeting the Sunshine Law requirements and transparency of our operation, the Council at its March 7, 2008 meeting adopted a new policy relative to meeting the Government in the Sunshine Law and the Public Records Act. In addition, our attorney . . . conducted a workshop on the Sunshine Law and Public Records Act and the policy at our March meeting."

We recommend the Council continue to provide periodic training for staff and Council members on the requirements and applicability of the Florida Sunshine Law to ensure compliance with the law. We also recommend that the Council staff develop and implement procedures to ensure all meetings are noticed as required.

2 - TRAVEL EXPENDITURES

The grant agreement with the U.S. Department of Health and Human Services requires the Council to be responsible for effectively controlling the use of funds in compliance with Federal requirements. Also, the Council's bylaws state that Council members can receive reimbursement for travel expenses in accordance with procedures established by the Council. Our

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review of Council policies and procedures, along with transactions occurring during the audit period, identified the following deviations:

- ***Policy on Personal Care Attendants***

In accordance with the Act, State Council policies can include provisions for reimbursing Council members for reasonable and necessary expenses including expenses for child care and personal assistance services while attending Council meetings and performing Council duties. The Council's travel procedures allow for personal care attendant fees to be reimbursed as incidental expenses when they are submitted with an invoice showing charges for services, dates and times of service, and signatures by the personal care attendant and the Council member. According to Council policy, members are encouraged to "use other reimbursement options first if they are available". Payments for services are reimbursed on an hourly basis at a rate not to exceed \$20 per hour or \$120 per 24-hour period. A Council member may get pre-approval from the Executive Director to exceed the payment limit if there is a hardship or special circumstance.

We noted that Council members seeking reimbursement for personal care attendant charges did not use the *Invoice for Personal Care* provided in the Council's Policies and Procedures Manual. Invoices submitted did not always include required details such as the times of services, the number of hours per day and the Council member's signature. These elements are necessary for establishing compliance with procedures and accountability for disbursements made.

Staff indicated use of the form is just a suggestion and not a requirement for Council members to follow. Failure to enforce this policy results in inconsistent application by Council members and staff and may result in abuse of the reimbursement policy.

Executive Order 95-478 states: *...the Council shall be governed by policies and bylaws consistent with the provisions of... the Act.* **We recommend** the Council enforce the policies and procedures to ensure accountability of funds.

In addition, we found several instances in which the Council reimbursed Council members for personal care attendant charges that were also reimbursed by a State agency. Specifically, we identified ten instances where hours reimbursed by the Council and the State agency, in total, exceeded 24 hours in a day. We also noted 41 instances where the Council and the state agency reimbursed Council members for personal care attendant services rendered on the same day. Without times recorded on the invoices submitted to the Council, we could not determine if the reimbursements were duplicative.

Council staff stated they do not question the validity of personal care attendants' invoices and they are not involved in the payments made by State agencies.

We recommend the Council strengthen internal controls over reimbursements to Council members by requiring members to certify that other reimbursement options are not available and reimbursement for invoiced charges will not be made by another agency for the same expenditure.

Information on the reimbursements made by the Council and the state agency for the same day's service was referred to the applicable state agency for further review.

- ***General Travel Expenditures***

During our review of travel vouchers, we noted where written justification or explanation for higher costs was not supplied for the following: (1) several instances where the Council reimbursed members for hotel charges ranging from \$154 to \$221 per night

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without justification; (2) a Council member sought reimbursement for \$19.17 for valet parking to attend a day meeting at a hotel when free complimentary parking was available; (3) a Council member submitted reimbursements for parking in an airport's short term parking area at \$20 per day for several days rather than using long term parking at \$15 per day or economy parking at \$9 per day; (4) the same Council member submitted receipts on at least three occasions to valet park at the airport at \$24 per day for six days rather than using long term or economy parking; and (5) a Council member regularly charged 26 miles from their home address to the airport meeting address when the distance is 14.5 miles.

While the hotel charges, use of valet parking and claiming reimbursement for additional miles may be appropriate under certain circumstances, there was no documentation of the circumstances and no evidence of advance approval for these charges.

We recommend the Council revise its policies to include requirements relating to the reasonableness of incidental travel expenses incurred and justification/approval for special circumstances and enforce those policies to ensure the effective control of use of funds in compliance with Federal regulations. Training on allowable costs and procedures for allowing exceptions should be provided to Council members and staff on a periodic and on-going basis.

3 - POTENTIAL CONFLICTS OF INTEREST

Federal regulations set forth standards for obtaining consistency and uniformity among Federal agencies in the administration of grants to and agreements with institutes of higher education, hospital, and other non-profit organizations. Title 45, Section 74.43, Code of Federal Regulations, *Competition*, states: "All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free

competition. The recipient shall be alert to organizations conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bid and/or requests for proposals shall be excluded from competing for such procurements."

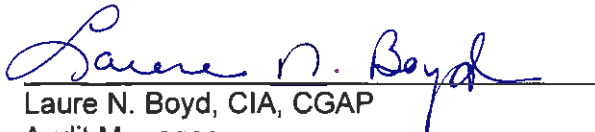
In January 2005, the Council's Executive Director obtained a legal opinion in which the Council's Legal Counsel reported that the Federal regulations "preclude the drafters of the original [contractual services] proposal from bidding on the ITN [invitation to negotiate]." The Legal Counsel wrote that "such conflicts could be overridden under the bylaws."

The Council's bylaws state "to avoid even an appearance of impropriety . . . it is the policy of the Council that no appointed Council member, acting in a private capacity, shall either directly or indirectly, provide any goods services or representation, for compensation, to the Council during the term of the member's appointment . . . unless the matter at issue is approved by a vote of two-thirds (2/3) of the total membership present, exclusive of the declarant, [emphasis added] at a duly called meeting at which a quorum is present . . ." This provision appears to be contrary to Federal regulations and permits transactions which may give the appearance of a conflict of interest.

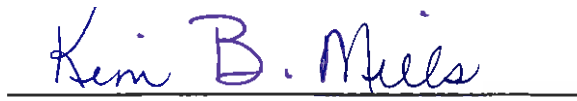
We recommend the Council revise their bylaws to be in agreement with Federal regulations pertaining to conflicts of interest and implement procedures to ensure compliance with those regulations.

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of the Florida Developmental Disabilities Council**

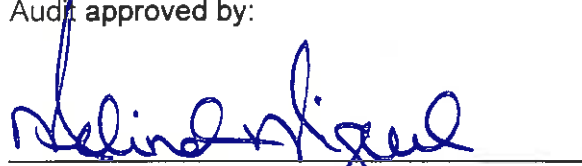
Audit Performed by:


Laure N. Boyd, CIA, CGAP
Audit Manager

Audit reviewed by:


Kim B. Mills, CPA, CIG, CGFM
Director of Auditing

Audit approved by:


Melinda M. Miguel, CIG, CPE, CGFM
Chief Inspector General

FLORIDA DEVELOPMENTAL DISABILITIES COUNCIL, INC.

Enrique Escallon, Chairperson
Debra Dowds, Executive Director

June 16, 2008

Ms. Kim Mills
Director of Auditing
Office of the Chief Inspector General
2103 The Capital
Tallahassee, Florida 32399-0001

RECEIVED
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Governor's Office
Chief Inspector General

Dear Ms. Mills:

The Florida Developmental Disabilities Council, Inc. provides the following response to the preliminary findings of the audit of selected administrative and operational activities of the Council.

1. Florida Sunshine Law:

We concur that periodic training for staff and Council members on the requirements and applicability would be advantageous to ensuring compliance with the Florida Sunshine Law. The Council at its March 7, 2008 quarterly council business meeting adopted a policy on meeting the requirements of the Florida Sunshine and Public Records Laws. This policy will provide additional specificity to the public meeting and posting requirements. The Council will develop and implement procedures by the Council's September quarterly Council meeting to accompany these policies and provide further checks and balances to ensure adequate compliance. The Council has instituted workshops for Council members and staff at the quarterly council business meetings. A workshop on the sunshine law and council policy was conducted in March 2008 and will henceforth be conducted on a bi-annual basis.

2. Travel Expenditures:

Personal Care Attendants

We concur that the standardized Invoice for Personal Care needs to be consistently utilized and needs to contain all of the essential elements as required by the personal care attendant policy that would prevent reimbursements that exceed the amount allowed within a twenty four hour period. The Council will revise its policy to require a specific form so that all of the essential elements are provided. Additionally, the Council will add an attestation statement to all reimbursements (including reimbursements for personal care attendants) to certify that other reimbursements options are not available and to certify that the member has not and will not submit a reimbursement request to another entity for these expenses being requested for reimbursement. We will be talking to other agencies to determine how we can share information on reimbursements.

General Travel Expenditures

We concur that the Council should revise its travel reimbursement policy to include requirements related to reasonableness of incidental travel expenses incurred and justification/approval for special circumstances to ensure the effective control of use of funds in compliance with federal regulations. The revised travel policy and reimbursement forms will be developed by the September quarterly Council meeting. Training on the new policy and forms will be presented at that meeting with refresher trainings conducted on a bi-annual basis.

3. Potential Conflict of Interest:

We concur that, while not the intent of the Council, an interpretation could be made that sanctions the Council overriding a federal law related to conflict of interest. The Council will amend its By-Laws at our September quarterly Council meeting to clarify that federal regulations pertaining to conflict of interest and other aspects of the procurement process related to conflict of interest cannot be superseded by council action. In addition, the Council is negotiating a contract with the University of Miami, Ethics Program, to develop a conflict of interest guide which will provide guidance to the Council relative to the potential conflict of interest situations it encounters and will provide recommendations as to how the Council should strengthen its conflict of interest procedures.

The Council would like to express its appreciation for the professionalism of the staff of the Governor's Inspector General Office in conducting this audit. If you have have any questions, please do not hesitate to contact me at 850-488-4180.

Sincerely,

Debra Dowds for

Debra Dowds
Executive Director

CC: Enrique Escallon

