



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Audit Services
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Honorable Rafael Aragunde-Torres
Secretary
Puerto Rico Department of Education
P.O. Box 190759
San Juan, Puerto Rico 00919-0759

Dear Secretary Aragunde-Torres:

This Final **Audit Report**, entitled *Puerto Rico Department of Education's Administration of Contracts Awarded to Excellence in Education, Inc. and the University of Puerto Rico's Cayey Campus*, presents the results of our audit. The purpose of the audit was to determine whether the Puerto Rico Department of Education (PRDE) (1) followed Federal and State laws in procuring services and awarding contracts to Excellence in Education, Inc. (EIE) and the University of Puerto Rico's Cayey campus (UPR-Cayey), and (2) ensured that contract requirements were met prior to paying the contractors' invoices.

BACKGROUND

EIE is a private, for-profit corporation located in Caguas, Puerto Rico. The mother of the former Under Director of PRDE's Office of Federal Affairs (OFA) owns the corporation.

UPR-Cayey is one of eleven campuses that compose the UPR educational system. According to Puerto Rico (PR) Law 174,¹ approved on August 31, 1996, the faculty members of the UPR are allowed to submit proposals through the UPR to provide services to different institutions and government agencies in PR. If a contract is awarded, the faculty members act as Project Directors,² and become responsible for coordinating all stages of the agreed-upon project. The owner of EIE was also a faculty member of UPR-Cayey and submitted proposals to PRDE through UPR-Cayey.

¹ Law 174, amended Law 1 of January 20, 1966, with the objective of authorizing the UPR to establish the Intramural Practice Plan, which allows professors to offer services to individuals and public and private institutions.

² Project Directors can receive up to 80 percent of the net proceeds of the awarded contracts.

On August 16, 2005, PRDE awarded UPR-Cayey a professional services contract in the amount of \$154,530 under the Title II, Part A, Teacher and Principal Training and Recruiting Fund, to provide training to teachers and directors from public and private schools with the objective of enhancing teaching strategies. Under the contract, the mother of the former OFA Under Director acted as Project Director. According to the proposal, entitled “Innovative Strategies to Diversify Teaching,” and identified as Attachment 1 in the contract, UPR-Cayey would bill PRDE \$130,050 for training related services, and \$24,480 for professional services. The training consisted of 64 workshops billed at a rate of \$60 per participant.

On July 31, 2006, PRDE awarded EIE a professional services contract in the amount of \$542,800 under the Title V, Part A, Innovative Program, to provide training on photojournalism strategies to students from 4th through 12th grade. According to the proposal, entitled “I am a Photojournalist, I Can Communicate Effectively,” and identified as Attachment 1 in the contract, EIE would bill PRDE \$28,000 for professional services, and \$514,800 for training. The training consisted of a total of 396 workshops³ that would be provided to 33 schools (12 workshops per school), billed at a rate of \$1,300 per workshop.

AUDIT RESULTS

We found that PRDE did not comply with Federal and State laws in procuring services and awarding contracts to EIE and UPR-Cayey due to the existence of a conflict of interest between the contractors and a PRDE official. Further, we found that PRDE did not ensure that contract requirements were met prior to paying EIE and UPR/Cayey’s invoices. In our review of two contracts, we identified questioned costs of \$189,011 (\$175,536 of excessive charges and \$13,475 of unsupported charges).

In its comments to the draft report, PRDE did not concur with our findings and requested that the draft’s findings and recommendations be reconsidered. In response to PRDE’s comments, we revised Finding No. 1 to exclude the conflict of interest finding related to the former Director of OFA’s April 2002 notarization of EIE’s Corporate Annual Report to the PR Department of State, which was done prior to her appointment as PRDE’s Director of OFA. However, PRDE did not provide any additional information that would require a change to the conflict of interest finding related to the former Under Director of OFA’s family relationship with the owner of EIE; Finding No. 2; or any of the related recommendations. PRDE’s comments are summarized after the recommendations section of each finding. The full text of its comments to the draft report is included as an Attachment to the report.

³ According to the proposal, workshops consisted of 11 training sessions of four days and one training session of two days to be provided to the students, with the objective of improving their Spanish language skills through the use of photojournalism techniques.

FINDING No. 1 – Conflict of Interest in the Procurement and Contracting Processes

A high level PRDE official had a conflict of interest when procuring services and awarding contracts to EIE and UPR-Cayey during her tenure, until she resigned in July 2007. Specifically, the former Under Director of OFA is the daughter of EIE's owner. EIE's owner was also a faculty member of UPR-Cayey and, as such, acted as Project Director for contracts PRDE awarded to UPR-Cayey related to proposals she submitted through the University. The conflict of interest occurred because PRDE did not have an effective recusal process in place for employees and contractors prior to participating in the procurement and administration of contracts awarded with Federal funds once a conflicting situation was discovered. As a result of the conflict of interest, PRDE did not comply with Federal and State laws in procuring services and awarding contracts to EIE and UPR-Cayey and did not maintain independence in contracting, which is necessary to instill contractors' confidence in receiving an equal opportunity to do business with PRDE. In December 2006, PRDE received a complaint from a competing contractor alleging a serious conflict of interest and violations of the Government Ethics Law regarding a UPR-Cayey proposal submitted by the former OFA Under Director's mother.

According to 34 CFR § 80.36(a) —

When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.

According to Article 6(A) of the Government of Puerto Rico Ethics Law —

All public servants must avoid taking any action, whether or not specifically prohibited by the Regulations that could result in or create the appearance of

- Using the powers of the position, or public funds or property for private ends;
- Giving preferential treatment to any person, without just cause;
- Impeding or hampering the governmental efficiency and economy;
- Losing complete independence or impartiality;
- Making decisions outside the official channels;
- Adversely affecting public confidence in the integrity and honesty of government institutions; and
- Promoting an official action without observing established procedures.

In addition, Article 1.2(s) of the Government of Puerto Rico Ethics Law defines conflict of interest as those situations in which the personal or economic interest of an employee or persons related to him could be in conflict with the public interest. Accordingly, the relationship

between PRDE and the two entities (EIE and UPR-Cayey) violates Puerto Rico's conflict of interest laws, which is described in the Ethics Law as a situation that must be avoided.

During the period of August 2005 through August 2006, PRDE awarded six contracts to EIE and UPR-Cayey totaling \$1,478,783. Two of the contracts were awarded to EIE and four were awarded to UPR-Cayey⁴ (including two amendments). Our review was limited to two contracts, one with EIE and one with UPR-Cayey. We found that the former OFA Under Director participated in the procurement and contracting processes for the EIE contract reviewed prior to resigning from her position. Although we did not review the remaining four contracts, based on our analysis of the position description detailing the responsibilities⁵ of the Under Director of OFA, it appeared that she had, at a minimum, oversight in the administration of all six contracts.

Our review of two other project proposals⁶ – EIE's proposal for School Transformation (ST), and UPR-Cayey's proposal for Systemic Initiative for School Transformation (SIST) with EIE's owner as Project Director – provides detail that demonstrates the level of the Under Director's involvement in procurement activities related to EIE's and UPR-Cayey's proposals submitted by the OFA Under Director's mother. We found that, despite the conflict of interest, the former Under Director of OFA participated in the procurement process for both projects prior to her resignation, including the coordination and administration of the evaluation process, and signing procurement documents.

Specifically, after the EIE proposal for ST did not receive the minimum required score to be considered for selection, PRDE canceled the project stating that the requirements established in the Request for Proposal (RFP) needed to be modified. Six days after cancelling the project, PRDE published a new RFP for the SIST project, essentially for the same project as the ST proposal. This time, the former OFA Under Director's mother submitted a proposal through UPR-Cayey acting as Project Director, and her proposal was selected. However, in December 2006, PRDE received a complaint from a faculty member of UPR-Cayey, whose proposal had not been selected. The complainant alleged a conflict of interest and violations of the Puerto Rico Ethics Law in the procurement process.

In January 2007, in response to the PRDE Secretary's request for an evaluation of the complaint, the Puerto Rico Government Ethics Office (PRGEO) issued an opinion stating that although the two contracting parties (PRDE and UPR-Cayey) were government entities, it was necessary for the public servant and the agency to establish a method of recusal to avoid the appearance of improper conduct. It also stated that the former OFA Under Director should be recused in writing from every process in which UPR-Cayey and/or her mother were involved. Finally, in regards to the contracts awarded to EIE, the PRGEO stated that it could not express an opinion on events that had already taken place.⁷ Based on PRGEO's opinion, PRDE sent a letter to the

⁴ According to the documentation provided by PRDE, the mother of the OFA Under Director acted as Project Director of the four contracts awarded to UPR-Cayey.

⁵ The position description included responsibilities for directing, organizing, coordinating, and supervising the work conducted by the OFA employees.

⁶ These two proposals were not included in the six contracts awarded to EIE and UPR-Cayey, but rather were submitted in response to PRDE's solicitation (Request for Proposals) as part of the procurement process.

⁷ The Secretary's request for the PRGEO opinion mentioned that since 2002, the mother of the former Under Director of OFA had been submitting proposals to PRDE, with two proposals having been approved and converted to contracts while the former Under Director worked for PRDE.

Chancellor of UPR-Cayey, stating that to avoid the appearance of improper conduct, the award for the SIST project had been canceled.

The participation of employees, officers, and/or agents of the grantee or subgrantee in the administration of the procurement and/or contracting process that could result in, or create the appearance of a possible conflict of interest, can adversely affect the public confidence in the integrity of government institutions. In addition, the conflict of interest reported in this finding may have resulted in special considerations given to EIE's and UPR-Cayey's proposals and the excessive charges detailed in Finding No. 2.

Recommendations

We recommend that the Assistant Secretary for Elementary and Secondary Education require PRDE to —

- 1.1 Establish an effective method for employees and contractors to ensure their independence prior to participating in the procurement and administration of contracts awarded with Federal funds;
- 1.2 Establish an effective recusal process for when a conflict of interest is discovered;
- 1.3 Establish an effective monitoring process to ensure that the processes established for independence and recusal are followed; and
- 1.4 Determine whether a conflict of interest existed in the procurement and administration of the remaining contracts with EIE and UPR-Cayey; and ensure that PRDE made no improper payments on those contracts.

PRDE's Comments

PRDE did not concur with our finding. In its comments to the draft report, PRDE stated that although the former Director of OFA notarized EIE's Corporate Annual Report to the Department of State in 2002, she never served as EIE's attorney. According to PRDE, notarizing a document several years prior does not rise to the level of creating a conflict of interest. Accordingly, any allegations regarding the former Director of OFA's involvement in procuring services and awarding contracts to EIE and UPR-Cayey should be reconsidered and withdrawn. As for the former Under Director of OFA, while PRDE recognized the potential for the appearance of a conflict of interest due to her family relationship with the Executive Director of EIE (also a UPR-Cayey faculty member), PRDE stated that the specific acts she may have been involved with under the ST and SISTS projects would not create a conflict of interest. PRDE pointed out that at early stages in preparing and issuing an RFP, it is unknown who the bidders will be, so a conflict of interest cannot arise at that time.

PRDE stated that while it disagreed with the finding, it takes concerns of conflict of interest in contracting extremely seriously. As such, PRDE agreed with our recommendations and stated that it is willing to review its current procedures to ensure it has an effective method for

employees and contractors to ensure their independence prior to participating in the procurement and administration of contracts awarded with Federal funds.

OIG's Response

PRDE is correct that the former Director signed EIE's Corporate Annual Report as a notary prior to her appointment as PRDE's Director of OFA and we revised the finding accordingly. However, a conflict of interest remained with the Under Director of OFA and, therefore, we did not change our recommendations. The participation of the former Under Director of OFA in the coordination and administration of the procurement processes for the ST and SISTS projects may have resulted in special considerations given to EIE's and UPR-Cayey's proposals. Although we found that on August 3, 2005, the former Under Director sent a letter to the former Director recusing herself from participating and signing documents related to projects in which UPR-Cayey was involved, this recusal process was not enforced. PRDE did not submit documentation for a recusal from the former Under Director for projects related to EIE until the December 2006 complaint⁸ was formally submitted. In response to the complaint, the PRGEO indicated that the former Under Director should recuse herself from every process in which her mother was involved.

As detailed in Finding No. 1, the former Under Director was informed of the RFP status for both the ST and SIST projects. During the RFP conducted for the ST project, she was informed of the RFP results, which included EIE's proposal submitted by her mother. In addition, the former Under Director signed the ST project cancellation letters sent to the bidders, including EIE, on behalf of the former Director. The cancellation letters also announced that a new RFP would be published. When the new RFP was published, the mother of the former Under Director submitted a proposal as Project Director through UPR-Cayey. According to the documentation we obtained, the former Under Director actively participated in the administration and coordination of the evaluation process of the SIST project until the complaint was formally submitted to PRDE. Such involvement constitutes a direct violation of Puerto Rico's own conflict of interest laws as described in the Government of Puerto Rico Ethics Law.

FINDING No. 2 – PRDE Lacked Controls in Administering Contracts

PRDE did not have adequate controls to enforce compliance with contract requirements and Federal regulations; and, therefore, did not adequately administer contracts awarded to EIE and UPR-Cayey. In the two contracts we reviewed, we found that PRDE paid \$189,011 in excessive and unsupported charges – \$166,575 related to the contract with EIE and \$22,436 related to the contract with UPR-Cayey. For the period of our review, PRDE paid \$175,536 in excessive charges and \$13,475 in unsupported charges. Payments were made on these contracts without ensuring that the contractors met the deliverable requirements of the contracts, or submitted proper and reliable supporting documentation for costs claimed.

⁸ The complaint alleged a conflict of interest and violations of the Puerto Rico Ethics Law in the procurement process for the SIST project.

We reviewed payments PRDE made on the two contracts⁹ totaling \$641,649.¹⁰ Table 2.1 shows the amount of questioned costs, including excessive and unsupported charges PRDE paid to EIE and UPR-Cayey under both contracts. Although Table 2.1 shows as paid the second invoice submitted by UPR-Cayey in the amount of \$44,349, our review was limited to payments made as of August 29, 2007,¹¹ with the exception of a limited review conducted for EIE's third invoice in the amount of \$219,767.

Table 2.1 Questioned Costs, Excessive Charges and Unsupported Charges

Contractor	Invoices	Payments	Excessive Charges	Unsupported Charges	Total Questioned Costs
EIE	(1) \$139,700	\$139,700	\$47,250	\$4,550	\$51,800
	(2) \$176,933	\$176,933	\$47,833	\$8,775	\$56,608
	(3) \$219,767	\$219,767	\$58,167	Not Reviewed ¹²	\$58,167
UPR-Cayey	(1) \$105,249	\$105,249	\$22,286	\$150	\$22,436
	(2) \$ 44,349	\$44,349	Not Reviewed ¹³	Not Reviewed	\$0.00
Total	\$685,998	\$685,998	\$175,536	\$13,475	\$189,011

According to 34 CFR § 76.702, “A State and subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.” In addition, 34 CFR § 80.20(b)(3) provide that “Effective control and accountability must be maintained for all grant and subgrant cash” Further, 34 CFR § 80.20(b)(6) states that, “Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract, subgrant award documents, etc.” Finally,

⁹ The total of the two contracts was \$697,330 (\$542,800 on the EIE contract, and \$154,530 on the UPR-Cayey contract).

¹⁰ Amount shown indicates the full amount of the invoices processed for payment before the appropriate deductions.

¹¹ As of August 29, 2007, UPR-Cayey's invoice in the amount of \$44,349 and EIE's third invoice had not been paid. As of November 2007, the two invoices had been processed for payment.

¹² We reviewed the total payments made as of August 29, 2007 and conducted a limited review of EIE's third invoice that was processed for payment in October 2007. As of November 2007, PRDE had paid \$536,400 for the three EIE invoices. However, our review was limited to the charges for the workshops in the third invoice to determine the overall impact of the contractor's change in the billing rate from the contracted rate. The third invoice in the amount of \$219,767 included \$5,600 billed for professional services and \$214,167 billed for workshops offered.

¹³ Invoice not audited.

Clauses 11 and 12 of the contracts established that payments would be made once the invoices were properly certified and their corresponding documentation, such as quotes, purchase orders, invoices, cancelled checks, attendance rosters, training materials, and progress reports, were received by PRDE.

EIE's Contract

EIE did not provide contracted services according to the contract terms. According to the proposal, EIE would provide a total of 396 workshops to 33 schools (12 workshops per school) billed at a rate of \$1,300 per workshop, for a total of \$514,800 for training. We found that EIE billed PRDE a total of \$514,000 for training in three invoices for 279 workshops to 24 schools¹⁴ at a rate of approximately \$2,040 per workshop on the first invoice, and \$1,785 per workshop on both the second and third invoices, instead of billing at the rate of \$1,300 provided in the contract. As a result, the three invoices reviewed included excessive charges of \$153,250 — \$47,250 in the first invoice, \$47,833 in the second, and \$58,167 in the third. In addition, EIE's first two invoices included billing errors of \$1,950 and unsupported costs of \$13,325.

All three invoices EIE submitted to PRDE were confusing, and the method used by EIE to arrive at the rate per workshop was not adequately documented. As such, PRDE paid the contractor what was billed without adequate information/documentation to understand what the charges included. We found that, by changing the method of calculating the rate per workshop, the contractor ensured it would receive almost the entire contracted amount for workshops without providing the full level of required services to the total number of schools included in the contract — 396 workshops to 33 schools. The following paragraphs detail the \$166,575 in excessive and unsupported charges we found in our review of the two invoices PRDE had paid to EIE as of August 29, 2007, and the charges for the workshops EIE billed on the third invoice it had submitted to PRDE as of that date, but PRDE had not paid.

Invoice One

Excessive Charges of \$47,250

On the first invoice, EIE billed PRDE \$139,700 (\$11,200 for professional services and \$128,500 for workshops). We determined that the \$11,200 billed for professional services was in accordance with the contract terms. However, the \$128,500 billed for workshops was excessive because EIE billed at the increased rate of \$2,040 per workshop, instead of the contracted rate of \$1,300.

The \$128,500 billed for workshops on the first invoice consisted of 63 workshops provided to 21 schools at the increased rate of \$2,040 per workshop. We determined that based on the contracted rate of \$1,300 per workshop, EIE should have billed PRDE \$81,900 for the 63 workshops provided to the 21 schools (63 x \$1,300). As a result, EIE's invoice included excessive charges of \$46,600 (\$128,500 invoiced - \$81,900 contracted rate).

We also found that EIE did not provide workshops to the students of the Barinas School on September 19 and 25, 2005, due to administrative work being done at the school. However, EIE

¹⁴ The first invoice included the workshops at 21 schools, the second added 3 more schools, and the third included the schools from both the first and the second invoice for a total of 24 schools served.

billed PRDE for those two days, resulting in additional excessive charges of \$650¹⁵ for workshops that were not provided.

Unsupported Charges of \$4,550

The supporting documentation EIE submitted to PRDE with the first invoice did not include evidence of attendance rosters for three workshops offered at the Inés María Mendoza school. As a result, EIE's invoice included \$3,900 (3 x \$1,300) in unsupported charges for those three workshops. In addition, EIE did not submit evidence for two days of workshops, one offered at the Jorge Lucas Valdivieso school and another at the Ramón Alejandro Ayala school, resulting in additional unsupported charges of \$650 for those workshops.

Invoice Two

Excessive Charges of \$47,833

On the second invoice, EIE billed PRDE \$176,933 (\$5,600 for professional services and \$171,333 for workshops). We determined that the \$5,600 billed for professional services was in accordance with the contract terms. However, the \$171,333 billed for workshops was excessive because EIE billed at the increased rate of \$1,785 per workshop, instead of the contracted rate of \$1,300.

The \$171,333 billed for workshops on the second invoice consisted of 96 workshops provided to 24 schools at the increased rate of \$1,785. We determined that based on the contracted rate of \$1,300 per workshop, EIE should have billed PRDE \$124,800 for the 96 workshops offered to the 24 schools (96 x \$1,300). As a result, EIE's invoice included excessive charges of \$46,533 (\$171,333 invoiced - \$124,800 contracted rate).

We also found that EIE did not provide workshops to the students of the Henry Longfellow, David Antongiorgi, Benigno Fernández, and Federico Degetau schools on October 4, 5, 11, and 16, 2005, due to administrative work being done at the schools. However, EIE billed PRDE for those four days, resulting in additional excessive charges of \$1,300 for workshops that were not provided.

Unsupported Charges of \$8,775

We found that the supporting documentation EIE submitted to PRDE did not include evidence of attendance rosters for six workshops (one offered at the Hipólito García school, one offered at the Ramón Alejandro Ayala school, and four offered at the Vicente Palés Anes school). This resulted in unsupported charges paid for workshops of \$7,800 (6 x \$1,300). In addition, EIE did not submit evidence for three days of workshops offered at the Intermedia Urbana Salinas, Jagueyes, and Hipólito García schools, resulting in additional unsupported charges of \$975.

¹⁵ The workshops lasted four days each. We estimated the cost of each workshop day to be \$325, based on the proposed rate of \$1,300 per workshop and the four days duration of each workshop ($\$1,300 / 4 = \325).

Invoice Three

Excessive Charges of \$58,167

On the third invoice, EIE billed PRDE \$214,167 for workshops. This amount was excessive because EIE billed at the increased rate of \$1,785 per workshop instead of the contracted rate of \$1,300. The \$214,167 billed for workshops on the third invoice consisted of 120 workshops offered to 24 schools at the increased rate of \$1,785. We determined that based on the contracted rate of \$1,300 per workshop, EIE should have billed PRDE \$156,000 for the 120 workshops offered to the 24 schools (120 x \$1,300). As a result, EIE's invoice included excessive charges of \$58,167 (\$214,167 invoiced - \$156,000 contracted rate).

UPR-Cayey's Contract

UPR-Cayey submitted to PRDE two invoices, one in the amount of \$105,249, and one in the amount of \$44,349.¹⁶ As of October 2007, PRDE had paid the two invoices submitted. However, our review was limited to the payment made as of August 29, 2007 in the amount of \$105,249. During our review we found \$22,436 in questioned costs related to four items on the first invoice PRDE paid to UPR-Cayey, as detailed in the following table.

Table 2.2 Questioned Costs on UPR-Cayey's Invoice

Item	Questioned Costs	Excessive Charges	Unsupported Charges
Workshops	\$16,800	\$16,800	\$ 0
Lunches	338	338	0
Training Materials	48	48	0
Stipends	5,250	5,100	150
Total	\$22,436	\$ 22,286	\$150

Excessive Charges of \$22,286

According to the proposal, UPR-Cayey would bill PRDE for 64 workshops at \$60 per participant. UPR-Cayey billed PRDE \$69,000 for 1,150 participants who attended 46 workshops (1,150 participants at \$60 per participant). The supporting documentation we reviewed showed that only 870 participants attended the 46 workshops. As a result, UPR-Cayey should have billed PRDE \$52,200 for workshops (870 participants at \$60 per participant). The overstatement of 280 participants on the invoice resulted in excessive charges paid for workshops of \$16,800 (\$69,000 invoiced - \$52,200 actual costs).

According to the proposal, UPR-Cayey would bill PRDE lunch expenses¹⁷ at \$8 per participant. UPR-Cayey billed PRDE \$3,906 for lunches served to 555 participants. We determined that this amount was not based on the proposed rate of \$8 per participant. In addition, the supporting documentation we reviewed showed that 446 participants attended the morning sessions, not the 555 claimed by UPR-Cayey. As a result, UPR-Cayey should have billed PRDE \$3,568 for

¹⁶ As of August 29, 2007, this invoice had not been paid.

¹⁷ Based on the invoice submitted by UPR-Cayey, a total of 450 training manuals were provided to the participants who attended the morning session of the workshops. Therefore, lunch expenses should have been invoiced based on the 450 participants and not the 555.

lunches (446 x \$8). The overstatement of 109 participants on the invoice resulted in excessive charges paid for lunches of \$338 (\$3,906 invoiced - \$3,568 actual costs).

According to the proposal, UPR-Cayey would bill PRDE for training manuals at \$23.75 each. Our review disclosed that UPR-Cayey invoiced PRDE \$10,688 for 450 training manuals, but according to the documentation provided, only 448 were distributed. As a result, UPR-Cayey should have billed PRDE \$10,640 for the 448 training manuals (448 manuals at \$23.75 each). The overstatement of two training manuals on the invoice resulted in excessive charges paid for training materials of \$48 (\$10,688 invoiced - \$10,640 actual costs).

The proposal established that UPR-Cayey would pay teachers a stipend of \$25 for each workshop they attended on Saturdays. According to the supporting documentation, UPR-Cayey issued checks to 74 participants totaling \$6,350, but billed PRDE \$6,300 (\$50 less than the documentation supported). We found that as of May 16, 2006, when the invoice was submitted to PRDE for payment, UPR-Cayey had not disbursed any of the checks, although copies of the checks¹⁸ were submitted as proof of the expense incurred. On August 3, 2007, we visited UPR-Cayey to review the documentation and found that of the 74 checks that had been issued, only 14, totaling \$1,200, had been disbursed, and two in the amount of \$200 (\$100 each) had been claimed twice. The remaining 58 checks, totaling \$4,950, had not been disbursed. According to a UPR-Cayey official, the remaining 58 checks had not been disbursed because they had not been able to locate the teachers. The official also stated that the 58 checks that had not been disbursed had not expired, although the institution's policy was to cancel all checks that had not been disbursed within three months of being issued. Since UPR-Cayey had not disbursed the funds for 58 of the participants, it should not have invoiced PRDE for that expense, nor for the two checks claimed twice. As a result, UPR-Cayey's invoice included excessive charges, and PRDE paid \$5,100 in excess of what should have been paid for stipends (\$6,300 invoiced – \$1,200 actual costs).

Unsupported Charges of \$150

We found that for 3 of the 14 checks that had been disbursed, there was no evidence showing that the teachers had attended the workshops. The three checks included attendance to more than one workshop (participants were to be paid \$25 per workshop). As a result, we determined that PRDE paid UPR-Cayey \$150 in unsupported charges for stipends.

General Noncompliance with Contract Requirements

During our review, we noted that the attendance rosters submitted by EIE as supporting documentation had the following deficiencies.

¹⁸ Copies of the front of the 74 checks were submitted.

- None of the attendance rosters included the proper legal citation of the Federal program funding the project. The attendance rosters had written on the header “Promoted by Title IV, Part A,” when the project was being funded with Title V funds. In addition, the attendance rosters with the EIE logo did not include PRDE’s name. According to Clause 24 of the contract, all written documentation prepared as part of the project had to have the name of the Federal program funding the project, as well as PRDE’s name.
- The teachers’ roll books were used as attendance rosters for some of the workshops, instead of an original document from EIE.
- Some of the attendance rosters were not certified by the person who offered the workshop.
- None of the attendance rosters included the name of the workshop offered. In addition, for one school where EIE claimed that a workshop was offered, the attendance roster included only the names of the students who attended the workshop. It did not include the company’s logo, the signature of the certifying official, the name of the school, or the name of the person who offered the workshop.

During our review, we noted that the attendance rosters submitted by UPR-Cayey as supporting documentation had the following deficiencies.

- The attendance rosters did not include the date workshops were conducted; instead they were identified as AM and PM sessions.
- The invoice submitted and its supporting documentation were confusing and inconsistent. The documentation submitted showed participants attending more than one workshop on the same day and time. UPR-Cayey submitted with the first invoice attendance rosters for the following Saturdays – September 3, 10, 17 and 24. A total of eight workshops were offered each of the four Saturdays, and each attendance roster submitted showed the same participants attending all eight workshops.
- An appropriate official was not certifying attendance rosters to determine if the information provided was relevant and sufficient to support the services provided.

Recommendations

We recommend that the Assistant Secretary for Elementary and Secondary Education require PRDE to —

- 2.1 Return to the Department \$175,536 in excessive charges paid;
- 2.2 Return to the Department \$13,475 in unsupported charges paid, or provide supporting documentation for the unsupported charges;
- 2.3 Review the second UPR-Cayey invoice and ensure that the payment was made based on the contracted rate;

- 2.4 Establish adequate controls to ensure compliance with contract requirements and Federal regulations, and ensure that payments are made only after
 - Proper documentation is obtained from contractors; and
 - Supervisory review and approval of payments and supporting documentation is conducted;
- 2.5 Provide training and continuously monitor the staff responsible for overseeing the administration of contracts to ensure that they are capable and qualified to administer the Department's programs; and
- 2.6 Instruct its Internal Audit Division to audit the remaining contracts awarded to EIE and UPR-Cayey.

PRDE's Comments

PRDE did not concur with our finding. In its comments, PRDE stated that it had not had the opportunity to complete its review of the payments made under the EIE contract, but that it had determined that the proposed terms of the contract included a total of \$514,800 for 12 workshops, which would be offered to a variety of groups of varying sizes. In addition, PRDE stated that the invoice clearly supported that EIE offered the 12 workshops and did not bill PRDE above the amount allotted under the contract for the 12 workshops.

Regarding UPR-Cayey's contract, PRDE stated that the draft misinterpreted the proposal's terms related to workshop costs. According to PRDE, the proposal charted the costs for the workshops to be offered under the contract at a total cost of \$12,000 and, while the proposal may have included details based on the contractor's projections for arriving at this cost, the proposal's terms clearly listed the "total cost" for each workshop series at \$12,000.

For meal costs (lunch expenses), PRDE stated that the draft claimed excessive charges based on the number of participants who attended the morning sessions of workshops, as opposed to the total number of participants attending workshops on a given day. The proposal's terms allowed for a total of \$4,800 in lunch expenses, which was based on participant projections, averaged out to \$8 per participant. PRDE added that the draft failed to address a Program Change—Justification for Transfer of Funds form that UPR-Cayey submitted, which PRDE approved allowing for an additional \$1,508 to be used for lunch expenses.

For training manuals, PRDE stated that it was not clear as to what documentation the draft was pointing to, or the reasons that existed to question the \$48 in manual costs.

Regarding stipends, PRDE stated that it had not yet had the opportunity to conduct a thorough review of the questioned costs related to stipends. PRDE added that it was going to work with UPR-Cayey to review the questioned costs and ensure that any excessive or unsupported charges related to stipends under the contract were returned.

OIG's Response

We considered PRDE's comments, but there was no additional information provided that would warrant a change to our finding or recommendations. Regarding EIE's contract, we maintain that EIE did not provide contracted services according to the contract terms. All three invoices EIE submitted to PRDE were confusing, and the method used by EIE to arrive at the rate per workshop was not adequately documented. As such, PRDE paid the contractor what was billed without adequate information/documentation to understand what the charges included.

Regarding UPR-Cayey's contract, we agree with PRDE's statement that the proposal included details based on the contractor's projections for arriving at the cost per workshop. However, as stated in the finding, the proposal established the cost for the workshops based on a rate per participant and not on a "total cost" per workshop series.

For lunch expenses, PRDE did not provide any documentation to support a change to our finding or recommendations. We maintain that a contract was signed based on the costs proposed by UPR-Cayey in the proposal of \$8 per participant for meals. The workshops consisted of morning and afternoon sessions and, according to the attendance rosters submitted by UPR-Cayey as supporting documentation, not all participants attended the entire day of training. In addition, the Program Change–Justification for Transfer of Funds form that UPR-Cayey submitted to PRDE was included as part of the supporting documentation for expenses incurred under the second invoice, not for the invoice we reviewed. According to the documentation provided, UPR-Cayey submitted two Justifications for Transfer of Funds, one dated May 30, 2006, and the other dated June 9, 2006, eight days after the contract period expired. The contract period expired on June 1, 2006.

Regarding training manuals, the attendance rosters submitted by UPR-Cayey as evidence to document the distribution of training materials to the participants did not correspond to the amount of training materials billed by UPR-Cayey in the first invoice.

Regarding stipends, as of May 16, 2006, when the invoice was submitted to PRDE for payment, UPR-Cayey had not disbursed any of the checks, although copies of the checks were submitted as proof of the expense incurred. As such, the questioned costs related to stipends remain the same based on documentation provided by UPR-Cayey officials on August 3, 2007.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our audit objectives were to determine whether PRDE (1) followed Federal and State laws in procuring services and awarding contracts to EIE and UPR-Cayey; and (2) ensured that contract requirements were met prior to paying the contractors' invoices.

To accomplish our audit objectives, we reviewed the process followed by PRDE-OFA in procuring services under competitive proposals and awarding contracts to EIE and UPR-Cayey. We randomly selected two contracts for detailed testing; one awarded to UPR-Cayey and one

awarded to EIE. We also reviewed two project proposals, one submitted by EIE, and another submitted by UPR-Cayey with EIE's owner acting as Project Director. We reviewed the procurement and contract award processes PRDE followed based on PR laws, PRDE-OFA's established guidelines, and pertinent Federal regulations. We also reviewed the participation of the former PRDE-OFA Director and Under Director in the procurement and contract award processes.

We interviewed officials from PRDE-OFA's Proposal Unit, the Title II, Title V, and Spanish Program Offices, school teachers, other PRDE officials, and participants of the services provided under the contracts. We also reviewed supporting documentation to determine if PRDE followed the established guidelines in procuring services and ensured that contract requirements were met prior to paying the contractors' submitted invoices.

To test compliance with contract requirements, we reviewed proposals submitted by the contractors, the contracts awarded, invoices with supporting documentation, and payments made to the contractors.

We reviewed four paid invoices under the two contracts – three from EIE, one for \$139,700, one for \$176,933, and one for \$219,767; and one for UPR-Cayey for \$105,249.

We selected random samples of participants who received services under the two contracts, to determine if the services were provided according to the contract terms. Our samples consisted of 25 teachers from a universe of 210 for UPR-Cayey's contract and 10 schools from a universe of 21 for EIE's contract.

The scope of our audit was contract activities from September 1, 2004, through December 31, 2006. We performed our fieldwork at PRDE-OFA from May 29, 2007, through November 6, 2007, the date we held the exit conference with PRDE officials. Our audit was performed in accordance with generally accepted government auditing standards appropriate to the scope of the review described above.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those 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.

ADMINISTRATIVE MATTERS

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report, represent the opinion of the Office of Inspector General. Determinations of corrective actions to be taken, including the recovery of funds, will be made by the appropriate Department of Education officials in accordance with the General Education Provisions Act.

If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Education Department official, who will consider them before taking final Departmental action on this audit:

Kerry L. Briggs
Assistant Secretary
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

It is the policy of the U.S. Department of Education to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within 30 days would be appreciated.

In accordance with the Freedom of Information Act (5 U.S.C. § 552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Sincerely,

/s/

Denise M. Wempe
Regional Inspector General
for Audit

Attachment

**Puerto Rico Department of Education
Response to Draft Audit Report: ED-OIG/A04H0011**

Submitted to:
Denise M. Wempe
Regional Inspector General for Audit
U.S. Department of Education
Office of Inspector General
61 Forsyth SW, Room 18T71
Atlanta, GA 30303
Denise.Wempe@ed.gov

The Puerto Rico Department of Education ("PRDE") herein submits its response to the United States Department of Education's Office of the Inspector General Draft Audit Report (the "Draft") entitled *Puerto Rico Department of Education's (PRDE's) Administration of Contracts Awarded to Excellence in Education, Inc. (EIE) and the University of Puerto Rico's Cayey Campus (UPR-Cayey)*. The Draft includes two findings. The first alleges conflict of interest in the procurement and contracting processes, and the second alleges lack of controls in contract administration.

PRDE takes allegations of this nature very seriously and we have carefully reviewed the specific contracts and procedures at issue. We are further undertaking a review of other contracts referenced but not analyzed. Based on the results of our review to date, PRDE respectfully disagrees with the Draft's findings and requests that the Draft's findings and recommendations be reconsidered. Each finding is discussed in turn.

I. Conflict of Interest Concerns

The first finding erroneously claims that two high level PRDE officials had a conflict of interest when procuring services and awarding contracts to EIE and UPR-Cayey during their tenure within the PRDE Office of Federal Affairs ("OFA"). The conflict of interest allegations regard general acts of oversight and administration, a particular contract issued to EIE entitled "I am a Photojournalist, I Can Communicate Effectively" ("IAP"), and the procurement processes for the School Transformation ("ST") and Systemic Initiative for School Transformation ("SIST") projects.

A. The Officials Alleged to Have Conflicts of Interest

The two identified officials are the former Director of the OFA and the former Under Director of the OFA. The mother of the former Under Director of OFA is the Executive Director of EIE and has served as a Project Director for several UPR-Cayey contracts with PRDE.

The Draft alleges that the former Director of OFA had a conflict of interest based on the mistaken assertion that she had a business relationship with EIE by formerly serving as EIE's attorney. Although the former Director of OFA notarized EIE's Corporate Annual Report to the PR Department of State in 2002, she never served as EIE's attorney. Notarizing a document several years prior does not rise to the level of creating a conflict of interest. The Draft's basis for alleging a conflict of interest between the former Director of OFA and EIE is simply incorrect. Accordingly, any allegations regarding the former Director of OFA's involvement in procuring services and awarding contracts to EIE and UPR-Cayey should be reconsidered and withdrawn. Additionally, the Draft alleges that because the former Under Director's mother was project director on contracts awarded by PRDE there was a conflict of interest. While we recognize the potential for the appearance of a conflict of interest due to this family relationship, we disagree that there was any conflict of interest present in this case.

B. The Acts Alleged to Involve Conflicts of Interest

The Draft alleges conflicts of interest due to general acts of or participation in oversight and administration of the procurement of contracts where EIE and/or UPR-Cayey competed for a contract with PRDE. This finding specifically addresses acts related to the IAP contract and the ST and SIST projects.

1. IAP

The Draft mistakenly alleges there was a conflict of interest in the procurement and administration of the IAP contract. The alleged incidents of conflict of interest related to this contract consist of benign acts removed from the evaluation and selection process by an individual who did not have a conflict of interest with the contractor, EIE. Specifically, the Draft finds that

...the former OFA Director participated in the procurement and contracting processes...Her participation included submitting the evaluating panel's recommended list of vendors to PRDE's Secretary for approval, notifying EIE's President that the proposal had been approved, accepting EIE's proposal modifications, and approving funds for the contract.

Draft, pp. 3-4.

As established above, the former Director of OFA did not have a conflict of interest with EIE because she had no relationship other than having notarized a document years before. Moreover, even if she had had such a relationship that could constitute a conflict of interest, the alleged acts are ministerial and removed from the actual evaluation and selection processes. None of the acts relate to the actual selection of EIE to be the contractor. Rather, the cited acts all occurred following the completely independent evaluation and recommendation of EIE to win the IAP contract. Because the former Director of OFA had no conflict of interest with EIE and because the alleged acts are removed from the evaluation and selection process, there was no conflict of interest present in the IAP contract.

2. The ST and SIST Projects

The Draft alleges that both the former Director and the former Under Director of OFA participated in the procurement processes of the ST and SIST projects in a manner that may have created a real or apparent conflict of interest. The Draft cites their participation in the procurement process for both projects prior to their resignation “including the coordination and administration of the evaluation process, and signing procurement documents.” As already discussed, the former Director of OFA had no conflict of interest with EIE or UPR-Cayey. As for the former Under Director, what specific acts she may have been involved in under this project that would create a conflict of interest are unclear. At early stages of preparing and issuing an RFP, it is unknown who the bidders will be so a conflict cannot arise at that time. The evaluation and selection process is the part of the process where a conflict could be most damaging. However neither of these individuals was involved in any way in that part of the process. Once selection has occurred, many if not most of the remaining actions are ministerial actions related to procurement and administration of contracts and would not be such that would create conflicts of interest. Contrary to the Draft’s suggestions, the ST proposal was withdrawn and the SIST project was announced for legitimate reasons free of any conflict of interest.

The Draft’s claim that the SIST project was “essentially...the same project” as the ST project is not an accurate portrayal. While there may have been superficial similarities between the two RFPs, there were important differences between the two proposals and these differences caused PRDE to cancel the ST RFP and issue the SIST RFP. First, the ST project was for work with schools that were in at least their third year of school improvement. The SIST project, however, was to work with schools that were in at least their fourth year of school improvement. This is a significant difference. Under the relevant law, the No Child Left Behind Act, a school in its third year of improvement must implement certain specified corrective actions. However, if the school enters the following year of failing to meet its AYP targets it must begin the restructuring process, a much more far reaching overhaul of the school. Second, the SIST RFP targets successful bidders to work with ten schools in improvement. ST, however, was less specific saying each project would work with 8-10 schools. Overall, the SIST RFP was far more detailed in explanation and process of selection, a requirement for any good contract management. The SIST RFP was a much better RFP for a project that superficially resembled ST but was different in important material respects, as well as providing a higher level of specificity. And again, any involvement the former Director or Under Director may have had with these projects did not include the evaluation or selection processes.

Nonetheless, upon receipt of a complaint from a UPR-Cayey faculty member whose proposal for the SIST project had not been selected, PRDE took said complaint very seriously. Upon receipt of the complaint, PRDE Secretary of Education Rafael Aragunde immediately requested a legal opinion from the Puerto Rico Government Ethics Office (“PRGEO”) on the matter. The former Under Director of OFA thereafter recused herself from participating in projects related to EIE and/or EIE’s owner. The former Director of OFA immediately notified all OFA staff regarding the former Under Director’s recusal and requested that staff immediately notify the Under Director as soon as it becomes apparent that any of these parties may be

involved in any matter. And finally, PRDE chose to terminate the SIST contract with UPR-Cayey in order to avoid any appearances of a conflict of interest.

While there was no conflict of interest involved in the ST and SIST projects, following the complaint, PRDE took immediate actions to eliminate any possible appearance of a conflict of interest.

C. PRDE's Response to the Draft's Recommendations under Finding No. 1

While PRDE disagrees with the finding, PRDE takes concerns of conflict of interest in contracting extremely seriously. As such, PRDE is willing to review its current procedures to ensure it has an effective method for employees and contractors to ensure their independence prior to participating in the procurement and administration of contracts awarded with Federal Funds (Recommendation 1.1), an effective recusals process for when a conflict of interest is discovered (Recommendation 1.2), and an effective monitoring process to ensure that PRDE made no improper payments on those contracts (Recommendation 1.3). In addition, PRDE is willing to review the remaining contracts addressed in Recommendation 1.4 to determine whether a conflict of interest occurred.

II. Controls in Administering Contracts

The auditors reviewed payments PRDE made under two contracts—one with UPR-Cayey and one with EIE. While PRDE has not yet completed its review of the payments outlined in the Draft, PRDE has identified several significant errors with this finding. The payments questioned under each contract are addressed in turn.

A. Contract with UPR-Cayey

The Draft questioned costs under this contract within four separate categories: workshops, meal costs, manuals, and stipends. As described below, PRDE disagrees with the Draft's findings under each category.

1. Workshop Costs

PRDE disagrees with the Draft's findings regarding workshop costs under the UPR-Cayey contract because the Draft mistakenly misinterprets the proposal terms relating to workshop costs. The proposal charts the costs for the workshops to be offered under the contract at a total cost of \$12,000 per workshop series. While the proposal may include details based on the contractors projections for arriving at this cost, the proposal terms clearly list the "total cost" for each workshop series at \$12,000. For example, the proposal suggests there will be 8 workshops per workshop series. This results in the value of \$1,500 per workshop.

In the invoice reviewed by the auditors, UPR-Cayey properly billed PRDE for workshops at the cost of \$1,500 per workshop as established under the terms of the proposal. The Draft suggests the proposal terms required UPR-Cayey to bill PRDE by participant. How the Draft comes to that conclusion is unclear.

2. Meal Costs

Regarding meal costs, the Draft finds there to be excessive charges by looking at the number of participants who attended the morning sessions of workshops as opposed to the total number of participants attending workshops on the given day. The proposal terms allowed for a total of \$4,800 in meal costs, which based on participant projections, averaged out to \$8/participant.

The Draft fails to address a Program Change—Justification for Transfer of Funds form that UPR-Cayey submitted and which PRDE approved allowing for an additional \$1,507.75 under the contract to be used for meal costs. In its justification, UPR-Cayey explained that they were unable to find caterers in certain occasions who were able to meet the \$8/participant target rate for supplying meals to workshop participants. This request and justification was approved in a letter signed by the Title II-A Coordinator within OFA. As the charges in the invoice fall within the amount appropriated for meal costs under the contract, PRDE respectfully disagrees with the Draft's finding of excessive charges.

3. Manual Costs

The proposal terms for manual costs include a total of \$14,250. This figure is reached by the projection of needing 600 manuals at the cost of \$23.75/manual. The Draft questions \$48 in manual costs on the grounds that UPR-Cayey billed PRDE for 450 manuals "but according to the documentation provided, only 448 were distributed." It is unclear what documentation the Draft is pointing to or what reason exists to question the \$48 charge.

4. Stipends

PRDE has not had the opportunity to conduct a thorough review of the questioned costs related to stipends. PRDE will work with UPR-Cayey to review the questioned costs relating to stipends under this contract and ensure any excessive or unsupported charges related to stipends under this contract are returned.

B. Contract with EIE (IAP)

PRDE has not yet had the opportunity to complete its review of the payments made under this contract. What PRDE has been able to determine is that the proposal terms of this contract included a total of \$514,800 for 12 workshops which would be offered to a variety of groups of varying sizes. What is clear from the invoice is that EIE did in fact offer the 12 workshops and did not bill PRDE above the amount allotted under the contract for the 12 workshops. As such, PRDE would ask that the questioning of costs under this contract be reconsidered as well.

C. PRDE's Response to the Draft's Recommendations Under Finding No. 2

For the reasons explained above, PRDE disagrees with this finding and asks that the recommendations be reconsidered. Specifically, PRDE respectfully asks that all monetary

recommendations (Recommendations 2.1 and 2.2) be withdrawn. PRDE is requesting that its Internal Audit Office audit the remaining contracts awarded to EIE and UPR-Cayey (as suggested in Recommendation 2.6) as well as the second UPR-Cayey invoice (as suggested in Recommendation 2.3).

III. Conclusion

In closing, PRDE respectfully requests the Draft, its findings, and its recommendations be reconsidered. There was no conflict of interest in the selection or awarding of the contracts discussed therein. Moreover, when concerns of the appearance of a conflict of interest were raised, PRDE immediately took swift and serious action in reviewing the situation. PRDE even cancelled a contract in order to avoid any appearance of a conflict of interest. In regards to the second finding, the monetary findings regarding the two contracts are simply mistaken. For all the reasons established herein, PRDE respectfully requests the reconsideration of the Draft in whole.