

**U.S. Department of Labor**

Office of Administrative Law Judges  
2 Executive Campus, Suite 450  
Cherry Hill, NJ 08002

(856) 486-3800  
(856) 486-3806 (FAX)



**Issue Date: 10 March 2010**

Case No.: 2007-WIA-00007

In the Matter of

**WESTCHESTER-PUTNAM COUNTIES CONSORTIUM  
FOR WORKER EDUCATION AND TRAINING, INC.**

Complainant

v.

**UNITED STATES DEPARTMENT OF LABOR**

Respondent

Appearances:

Emily A. Roscia, Esq.  
For Complainant

Frank P. Buckley, Esq.  
For Respondent

Before: Ralph A. Romano  
Administrative Law Judge

**DECISION AND ORDER**

This is proceeding under the Workforce Investment Act (Act), 29 U.S.C. 2801 et seq., and administrative regulations found at 20 C.F.R. 667.800, et seq., involving the propriety of corrective action/sanctions imposed by the Secretary of Labor under Section 2934 of the Act.

The matter was tried on June 11, 2009 in New York, New York. Briefs were filed by February 16, 2010.<sup>1</sup>

Complainant presented the testimony of Ms. Lucy Redzeposki, the Vice President of Training and Employment Programs for the National Association on Drug Abuse Problems (NADAP), who subcontracted with Complainant to administer the grant here involved (Tr. 58 et seq.).

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<sup>1</sup> While the Respondent's (Government's) brief is dated October 9, 2009, by some mishap, same was not received until by facsimile, on February 16, 2010.

The Government presented the testimony of Ms. Rebecca Bowen who is employed by the Office of Inspector General, Department of Labor, and served as auditor in charge of the audit in this case (Tr. 22, et seq.)

Twenty three “ALJ” exhibits were received, as well as Complainant’s (CX) #1 and #2, and Administrative File (AF) exhibits Volume I (Sec. A to E) and Volume II (Sec. F).

### BACKGROUND

Complainant here seeks to nullify \$91,939 of excessive administrative costs found upon Government audit for the period October 2002 through November, 2003 as against Complainant. The initial grant awarded \$500,000 to Complainant for training in the building trades for 60 youths and 45 adult participants. Initially, \$127,357 in such costs were found excessive, but this figure was later reduced. Essentially, the audit resulted in reclassifying certain claimed program costs to administrative costs, which resulted in such administrative costs exceeding the grant-specified limit of 10% of the grant awarded.

### DISCUSSION

Complainant’s first defense may be summarized as follows:

NADAP is a “subrecipient” under 20 C.F.R. 660.300 which is not subject to the administrative cost limitation as contained in 20 C.F.R. 667.210(b) because it is both an “entity to which a subgrant has been awarded” and “...is accountable to the [Complainant] recipient...for the use of funds provided.”

But, there is no evidence that NADAP “...is an entity to which a subgrant has been awarded”. The grant agreement names and identifies only Complainant as the entity to which the grant is made (AF @ 70). No mention of any grant or subgrant to NADAP is there made. There is no showing that because NADAP is mentioned in this agreement as a subcontractor to Complainant to develop, manage and implement its programs (AF @ 89), it has become a subgrantee or an “...entity to which a subgrant has been awarded” within the meaning of 20 C.F.R. 667.210(b).

Also, presuming even that NADAP is a “subrecipient” under 20 C.F.R. 660.300, there is no showing that Complainant (named Grantee) is not nevertheless restricted to 10% administrative costs and thus liable herein. The auditor’s finding that NADAP was not found to be a “subrecipient”, (AF 42), is not “[T]he basis for the auditor’s finding of excess administrative costs...”, as argued in Complainant’s brief (@ 8). The basis of the auditor’s finding that Complainant is responsible for regulatory excessive administrative costs is that Complainant and NADAP were found to be operationally indistinguishable despite being separate legal entities due to NADAP’s performance of very extensive enumerated grantee administrative functions (AF 42-3).<sup>\*2</sup>

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<sup>2</sup> The Government’s counterargument to Complainant’s position, i.e., that in delegating all responsibility to NADAP in order to avoid excessive administrative costs responsibility would be

Complainant's second defense is that the Government has failed to meet its burden of production since: the administrative file (AF) lacks documentation allowing NADAP to draw down funds; the two Government auditors who investigated this matter failed to testify at trial; and, it is "unclear" how the \$91,939 excessive administrative costs figure sought to be affirmed herein, was arrived at.

But, whether documentation exists bearing upon NADAP's authority to draw funds from the grant has no impact on whether the Government has sustained its burden to establish that excessive administrative costs have been claimed (*supra*). Neither does the absence of trial testimony from the investigative auditors. The testimony of Ms. Bowen, who managed the subject audit, and was, in fact the "...auditor in charge..." and "...responsible for the day-to-day audit function..." Tr. 23), is entirely sufficient to meet the Government's burden in this regard.

Finally, Complainant's suggested lack of clarity and inconsistencies relative to the amount asserted as being excessive, is not borne out in this record. In the first place, the differing amounts of excessive costs are, in part, explainable by reason of the appearance of differing amounts being reached at differing audit stages (e.g. initial vs. final determination). The methodology finally used in calculating the \$91,939 (See Government Brief @ 8; Tr. @ 39; ALJ 23), is found to be grounded in the relevant numerical facts presented in this record.

#### ORDER

The disallowance of administrative costs in the amount of \$91,939 is AFFIRMED.

**A**

Ralph A. Romano  
Administrative Law Judge

Cherry Hill, New Jersey

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file exceptions ("Exception") with the Administrative Review Board ("Board") within twenty (20) days of the date of issuance of the administrative law judge's decision. *See* 20 C.F.R. § 667.830. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. Your Exception must specifically identify the procedure, fact, law, or policy to which exception is taken. You waive any exceptions that are not

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subversive to the purpose of 20 C.F.R. 667.201(b) (Br. @ 5), seems to miss the point, as Complainant insists that no such transfer of full responsibility was made in that NADAP ran all of its decision by Complainant for approval, and thus NADAP was held accountable by Complainant (Complainant's brief @ 7, *et seq.*)

specifically stated. Any request for an extension of time to file the Exception must be filed with the Board, and copies served simultaneously on all other parties, no later than three (3) days before the Exception is due. *See* 20 C.F.R. § 667.830; Secretary's Order 1-2002, ¶4.c.(42), 67 Fed. Reg. 64272 (2002).

A copy of the Exception must be served on the opposing party. *See* 20 C.F.R. § 667.830(b). Within forty-five (45) days of the date of an Exception by a party, the opposing party may submit a reply to the Exception with the Board. Any request for an extension of time to file a reply to the Exception must be filed with the Board, and a copy served on the other party, no later than three (3) days before the reply is due. *See* 20 C.F.R. § 667.830(b).

If no Exception is timely filed, the administrative law judge's decision becomes the Final Decision and Order of the Secretary of Labor pursuant to 20 C.F.R. § 667.830(b) unless the Board notifies the parties within thirty (30) days of the date of issuance of the administrative law judge's decision that it will review the decision. Even if an Exception is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the filing of the Petition notifying the parties that it has accepted the case for review. *See* 20 C.F.R. § 667.830(b).