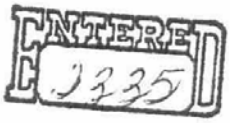
EXHIBIT C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE CHIEF FINANCIAL OFFICER

Natwar M. Gandhi
Chief Financial Officer

October 21, 2003



Charles C. Maddox, Esq.
Inspector General
Office of the Inspector General
717 14th Street, NW
5th Floor
Washington, DC 20005

Dear Mr. Maddox:

This is in response to your draft report which summarizes the results of the Office of the Inspector General's Audit of Procurement Activities by the Office of Contracting and Procurement and the Department of Human Services (OIG No. 02-13MA). The report contains one finding and four recommendations:

Finding: The Department of Human Resources (DHS) violated District of Columbia financial policies by deobligating funds and redirecting funds that were encumbered for existing contracts in order to fund other contracts.

Recommendation 1

We recommend that the Chief Financial Officer, Office of the Chief Financial Officer determine if a violation of the Anti-Deficiency Act occurred and take any appropriate action.

Recommendation 2

We recommend that the Chief Financial Officer, Office of the Chief Financial Officer, finalize the draft Financial Policies and Procedures Manual and issue it in final version within 60 days.

Recommendation 3

We recommend that the Director, Office of Contracting and Procurement, establish supervisory oversight control procedures to ensure that contracts are not deobligated in order to move funds to another contract without canceling the existing contracts or identifying other funding to support the existing contracts.

Recommendation 4

We recommend that the Director, Department of Human Services establish a level of oversight to ensure that any deobligation of encumbered funds for contracts under his/her supervision does not violate federal and District Anti-Deficiency provisions.

Response:

DHS concurs with the factual findings of the Office of the Inspector General. However, the Agency's practices regarding the deobligation of funds for contracts for MRDDA has to be reviewed in the context of the requirements of the federal Court Orders in Joy Evans v. District of Columbia. Evans is a class action lawsuit, filed on behalf of persons with mental retardation and developmental disabilities who were under the District supervision and housed at Forest Haven. On page 6 of the Evans remedial plan dated August 2, 1996 (Enclosure 1), the court order states that "with respect to non-Medical payments found to be overdue, defendants shall be assessed a coercive civil fine of twice the amount overdue." In addition, the federal Court in Evans issued a number of other federal court orders which mandated specific levels and consumer protections which were intended to ensure that individuals were kept free from harm.

In August 1996, a meeting was held with the Office of.Corporation Counsel (OCC), the Office of the Chief Financial Officer (OCFO) and the Department of Human Services (DHS) during which it was determined that since the lawsuit was filed in U.S. District court, all federal court orders associated with the action superseded the District of Columbia local procurement laws if the application of those laws would have prevented compliance with the federal court orders. In addition, the failure of the District to satisfy the Court Orders (including the failure to pay the civil fines) could have led to further sanctions, including criminal contempt, criminal fines or the imposition of jail sentences and/or a court receivership to operate MRDDA.

Notwithstanding that decision, the DHS administration and the DHS Chief Financial Officer have made every attempt to work within the DC procurement regulations while trying to maintain compliance with the orders of the Evans case.

In the case of FY2001, the program was unable to determine what services were performed pursuant to an executed agreement and services rendered without a contract. Again, the agency CFO discussed the issue with the Deputy Mayor and a decision was made to pool funds to ensure timely payment and adherence with that component of the plan. In the case of the FY2002 operations, the Deputy Mayor for Children Youth and Families, who was also the Interim Director of DHS, requested via memorandum dated December 18, 2001 (Enclosure 2), that monies accrued to pay for fines imposed be made available to fund operating needs; the funds were made available July 31, 2002, seven months later (Enclosure 3). In August 2002, the Department received an additional $4.5 million supplemental budget authority (Enclosure 4).

The operational and fiscal impact of such a delay would have resulted in non-compliance with the August 1996 order, resulting in several millions of fines being imposed and a contempt order being imposed. Before any action to deobligate and pool funds was taken, the DHS CFO discussed the issue and obtained the verbal approval of the Deputy Mayor.

Given the nature of the Evans federal court orders, the recommendations when adopted will not necessarily ensure that such a situation will not recur. The early identification of funding, service delivery or contracting problems and timely resolution of the identified problems is the solution.

In closing, it should be noted that DHS did not overspend its budget in either of the fiscal years involved. Additionally, all non-court supervised DHS programs operated in compliance with the District of Columbia's Municipal procurement regulations.

Please feel free to contact me at 727-2476 or [redacted], Associate Chief Financial Officer at [redacted], if you have any questions.

Sincerely,

Natwar M. Gandhi
Chief Financial Officer

Enclosures

cc: Deloras Shepherd, Associate CFO, Human Support Services
Yvonne Gilchrist, Acting Director, DHS
Jacque Abadie, Chief Procurement Officer, Office of Contract and Procurement
Ben Lorigo, Executive Director, OIO

Enclosure 1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES
WASHINGTON, D.C. 20002

IN REPLY REFER TO:

AUG 15 1996

MEMORANDUM

MADDA

TO: Anthony Williams
Chief Financial Officer

FROM: Controller

SUBJECT: Evans Order Adopting the Special Master's Recommendation

The attached is the most recent order issued in the Evans decree. The special master has made several recommendations which the court has adopted; the remedial plan identifies specific time frames for payment and the imposition of fines for failure to adhere to the dates.

The DHS Office of the Controller is unable to process in excess of $2.0M in payments because the contracts have expired the services continue; I am requesting your approval to use this order to process payments to Evans service providers for services rendered through September 30, 1996 to avoid the payment of fines and further contempt action.

✓ Approved ___ Disapproved

I am also recommending that the Treasurer's Office convene a meeting with the Commission on Healthcare Finance to develop a plan to comply with the Medicaid payment requirements.

✓ Yes ___ No

Your favorable consideration of this request is appreciated. I can be reached on 279-6801 if additional information is needed.

Attachment

9/26/96

cc:

DHS 107

FILED

AUG 2 1996

Clerk, U.S. District Court
District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOY EVANS, et al., Plaintiffs,	
UNITED STATES OF AMERICA, Plaintiff-Intervenor,	Civil Action No. 76-293 SSH
v.	
MARION BARRY, et al., Defendants.	

REMEDIAL PLAN

In accordance with the accompanying Order adopting the proposed findings of fact contained in the Special Master's January Report and Supplemental Report, the Court establishes the following Remedial Plan.

I. REMEDIES FOR DEFENDANTS' CONTINUING CONTEMPT IN FAILING TO MAKE TIMELY PAYMENT TO CLASS CARE PROVIDERS

A. Medicaid Waiver Application

In her January Report, the Special Master recommends that defendants be required to apply to the Health Care Financing Administration (HCFA) of the United States Department of Health and Human Services for a home-and-community Medicaid waiver, pursuant to Pub. L. 94-35, sec. 2176. In her Supplemental Report, the Special Master informs the Court that defendants submitted an application to HCFA for a home-and-community Medicaid waiver on April 30, 1996. Accordingly, this portion of the Special Master's recommendations has been satisfied and is not adopted by the Court in this Remedial Plan.

B. Payment of Invoices and Medicaid Reimbursement

The Court adopts the Special Master's recommendations as to

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recommendations of the Special Master and which, in time, are expected to enable defendants to come into compliance with the terms of this Court's multiple Consent Orders.

FINDINGS OF FACT

I. PAYMENT OF CARE PROVIDERS

The Court adopts the Special Master's proposed findings of fact contained in her January 1996 Report regarding the continued and unacceptable delays in payment of Evans care providers, both those paid through Medicaid and those paid from the Mental Retardation and Developmental Disabilities Administration (MRDDA). In her Supplemental Report, the Special Master adds:

> Since the filing of the January 1996 Report, neither Medicaid payments nor payments from MRDDA to Evans providers have met the requirement of the 1983 Consent Order, para. IX, section 10, that defendants pay acceptable invoices within 30 days of their submission.

Suppl. Report at 2. The Supplemental Report does note that defendants "have shortened the time in which they paid many providers and eliminated much of their backlog of overdue payments." Id. In addition, the Supplemental Report notes that defendants, while providing the Special Master with some information about the status of MRDDA and Medicaid payments, have failed to provide her with accurate (or, in some cases, understandable) documentation chronicling those payments. Suppl. Report, Ex. A.

The Court adopts those further proposed findings of fact contained on pages 3 and 4 of the Special Master's Supplemental Report regarding defendants' failure to timely pay Evans care

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providers. The Court notes especially the Special Master's representation that, should the District fail to obtain soon from Congress authority to borrow up to $600 million, "defendants will become increasingly unable to make timely payment to Evans providers." Suppl. Report at 3.

In addition, the Court adopts in full the further proposed findings of fact enumerated in the Special Master's Supplemental Report, regarding defendants' concession that many class care providers (or vendors) do not have contracts with the District of Columbia government. Instead, many care providers have temporary contracts with the city, which expire after 120 days and which must be renewed through MRDDA. On May 2, 1996, the District of Columbia City Administrator revoked the authority of the DHS to contract with private vendors and placed contracting authority with the District's Procurement Task Force, which reports to the City Administrator. This recent development has thrown, or at the least has the potential to throw, the contracting process into further upheaval. See Suppl. Report at 5-6.

II. CASE MANAGEMENT RATIOS

The Court adopts in full the proposed findings of fact set forth by the Special Master in her January Report and her Supplemental Report. In her January Report, the Special Master noted (and defendants do not dispute) that the ratio of case managers to MRDDA clients was far higher than the 1:60 ratio required by multiple Consent Orders in this action. January Report at 17-18. In her Supplemental Report, the Special Master

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