



## Department of Energy

Bonneville Power Administration  
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GENERAL OFFICE  
WASHINGTON, D.C.  
U.S. OFFICE OF  
SPECIAL COUNSEL

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EXECUTIVE OFFICE

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In reply refer to: A-7

Mr. Scott J. Bloch  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

Dear Mr. Bloch:

The Secretary of Energy delegated authority to me to investigate and report to you on allegations referred by the U.S. Office of Special Counsel (OSC) on October 6, 2004, concerning Bonneville Power Administration (BPA) e-procurement contracts (OSC File No. DI-04-1279). As Administrator of BPA, I have full authority to take actions necessary under 5 U.S.C. § 1213(d)(5) as warranted by the results of the investigation. Following is a summary of the allegations, a description of the conduct of the investigation, a summary of information resulting from the investigation, BPA's conclusions regarding any violations identified, and actions BPA has taken or planned that address these matters.

### A. Summary of Allegations

The allegations in the referral letter involve BPA contracts with the Pantellos Group Limited Partnership (Pantellos) for electronic purchasing (e-procurement) services. BPA employee, Ramona Swann, alleged that:

- In contracting with Pantellos, BPA did not comply with Bonneville Purchasing Instructions (BPI)<sup>1</sup> requirements for competitive award of contracts.
- BPA did not prepare any documents supporting the award of the initial contract to Pantellos.
- The Contracting Officer (CO) for the Pantellos contract did not determine the reasonableness of Pantellos' monthly fee, and best buy analysis of e-commerce service providers shows it was not fair and reasonable.

<sup>1</sup> BPA has independent procurement authority under its organic statutes. *Vulcan Power Company v. Bonneville Power Administration*, 89 F.3d 549, 555 (9<sup>th</sup> Cir. 1996). BPA implements this authority in the form of the guidance in the BPI. See BPI 1.3 at <http://www.bpa.gov/corporate/KGP/bpi/bpi.htm>. Use of the BPI allows BPA to meet its responsibility to operate like a business. *Association of Public Agency Customers v. Bonneville Power Administration*, 127 F.3d 1158, 1170 (9<sup>th</sup> Cir. 1997). BPA does not follow the Federal Acquisition Regulation. See *Comp. Gen. Decisions B-149016, B-149083, July 19, 1962; Congenel, B-159458, 46 Comp. Gen. 349, 2966; and International Line Builders, B-277811.1, November 10, 1987, 87-2CPD.*

- The initial contract's monthly base fee did not offset subsequent fees charged by Pantellos for conducting on-line reverse auctions for BPA.
- BPA paid for two reverse auctions that Pantellos did not perform.

In an interview during the investigation, Ms. Swann also alleged that the initial Pantellos contract did not conform to the BPI because it lacked BPI clauses.

### B. Conduct of Investigation

BPA Internal Audit conducted the investigation of Ms. Swann's allegations at BPA headquarters in Portland, Oregon, during December 2004 and January 2005. The investigation included interviewing all persons mentioned in the referral memorandum, as well as BPA's Head of Contracting Activity (HCA) and the BPA attorney who reviewed the draft of the initial Pantellos contract. In addition, Internal Audit reviewed the electronic and hardcopy documentation for the Pantellos contracts.

### C. Summary of Information Resulting from Investigation

This section of the report summarizes information resulting from the investigation, both relevant background information and information addressing specific events and issues involved in the allegations. The information forms the basis for BPA's conclusions regarding any violations of laws, rules, or regulations, which is presented in the next section of this report.

#### Concerning BPA evaluation of e-commerce

In 2000, BPA evaluated electronic purchasing (e-commerce/e-procurement) as a cost reduction measure. This included attending Northwest Utilities Consortium meetings between August and October 2000, which evaluated utilities' purchasing requirements and purchasing strategies, including use of e-commerce. The meetings also considered various e-commerce vendors' products and services, their fees for entry, monthly access, and transactions, and related costs of system interface, software purchases, and firewall security measures. In November 2000, BPA Supply Chain Manager, Ann Scholl, HCA, Kenneth Berglund, and BPA information technology specialist, Trish Holden, attended meetings sponsored by the Electric Power Research Institute (EPRI) and Pantellos on public power e-procurement and e-commerce products. They learned that EPRI had negotiated a low-cost umbrella contract with Pantellos to provide e-commerce services for public power utilities. They also learned that Pantellos specialized in utility specific e-commerce, offered a complete range of e-commerce products and services, had a complete business plan with financial backing by 21 utilities, and had a secure web site that BPA's purchasing system could interface with at no cost above contract costs.

### Concerning selection of Pantellos and contract creation

After considering the various vendors and business issues mentioned above, Ms. Scholl, Mr. Berglund and Ms. Holden concluded that Pantellos was the best fit for BPA. In February 2001, Ms. Scholl asked Ms. Patricia Spray (also known as Potter), BPA Contracting Supervisor (retired), and CO, Robert Gable, to establish a contract with Pantellos using the umbrella EPRI/Pantellos agreement (a commercial contract). It is established BPA policy to use commercial contracts to acquire EPRI services. BPA's Office of General Counsel reviewed the draft contract for legal sufficiency and Mr. Gable signed contract 4258 on February 28, 2001.

Mr. Gable said that he awarded contract 4258 based on Ms. Scholl's input that she had reviewed available vendors and found that Pantellos was the best fit for BPA. However, he did not ask Ms. Scholl to prepare the Document of Award Decision (DAD), nor did he obtain her input to prepare the DAD (as required by BPI 12.8.2) and did not know the specifics regarding why BPA had awarded the contract. He also said that, due to a heavy workload, he never prepared a complete contract file.

### Concerning contract administration

In April 2001, BPA hired Ms. Judy Chipman to be BPA's purchasing process manager with specific responsibilities to implement BPA's e-procurement program. Ms. Chipman was appointed as team lead for BPA's e-commerce/Pantellos implementation team, and as the Contracting Officer's Technical Representative (COTR) for the Pantellos contract. Ms. Chipman's primary responsibility at that time was to make e-commerce work at BPA. Ms. Chipman said she believed she was empowered to negotiate changes to the Pantellos contract to meet that objective.

Over the next two years, Ms Chipman negotiated several contract 4258 modifications involving increased services, fees and time extensions. The monthly fees increased from \$7,000 (plus \$1.00 per transaction) to \$20,500. Of the \$13,500 increase, \$5,500 involved the service of hosting an electronic market site for BPA to post BPA-specific catalogs for purchasing against blanket agreements with vendors that allowed up to 30 BPA employees to access/order catalog items (Amendment No. 3, December 6, 2002). The remaining \$8,000 increase let BPA receive unlimited Pantellos consulting analysis and assistance (Amendment No. 4, March 6, 2003).

Mr. Gable signed Amendment No. 3 and Amendment No. 4 even though he did not negotiate these modifications. He said that he signed Amendment No. 3 at Ms. Chipman's behest, but did so reluctantly because the "buyer access" description provided for the modification did not explain what additional services BPA would receive. He said that he thought the initial monthly fee for accessing Pantellos' website was reasonable. However, because the initial contract purpose was to obtain access through the website, he had not considered the \$5,500 increase justified until recently when he learned the full extent of the services BPA received.

Concerning use of Pantellos reverse auctions and catalog purchasing services

During December/January 2002, BPA wanted to test Pantellos reverse auction and catalog purchasing services, and to charge the requesting organization for the related costs. Since contract 4258 did not include such services and did not have a charge-back mechanism, Mr. Gable established "blanket" contract 8341 on January 31, 2002. Blanket contracts require that a contract release be prepared before work is authorized. This contracting mechanism facilitates charging the requesting organizations for the services provided under the contract.

On June 18, 2002, Mr. Gable was presented with an invoice for \$50,750 for a reverse auction that he had not been advised of and that had no contract release. He said he told Ms. Chipman that a release was required before work is authorized, but in this one instance agreed to issue a post-work release authorizing payment because the service had already been provided.

In December 2002, Mr. Gable was presented with another invoice for \$50,000 involving three reverse auctions. Again, he had not been advised of the auctions and they lacked pre-work releases. He did not issue releases for these auctions, but said he suggested that Ms. Chipman authorize the work using her warrant, which she did in post-work releases no. 3 through 5 (Snohomish Maintenance Building - \$15,000; Ross Complex Security Fencing - \$17,500; and Walla Walla, Washington Power Transformer - \$17,500).

Concerning Ms. Swann's requests for files/documents and questions about fee increases

In May 2002, BPA hired Ms. Swann as the Manager of Construction Services and Field Purchasing. On July 11, 2002, Ms. Swann met with Pantellos representatives to discuss their contracts. When she learned about the \$7,000 monthly subscription fee plus fees for other services, she thought BPA might be over-paying. She said that she asked Mr. Gable to let her review the contract files, but that he provided neither the files nor any Pantellos contract documents. Mr. Gable said he did not recall Ms. Swann asking for the files or contract documentation. He said that, since she was his supervisor, he would have given her all available documentation regarding the Pantellos contract(s) if she had asked for it. He recalled telling Ms. Swann in April 2003 that he put contract 4258 in place at Ms. Scholl's request after she said her review of vendors showed Pantellos was the best fit for BPA, but that he did not prepare a DAD.

Ms. Swann said that her inquiries in July 2002 to June 2003 about the Pantellos contract files, DADs, and monthly fee increases were referred by Ms. Scholl to Ms. Chipman, but that the latter never gave her adequate explanations. She said that she never learned why BPA selected Pantellos or what justified increasing monthly fees from \$7,000 to \$20,500.

#### Concerning Ms. Swann's questions about charges for two reverse auctions

On September 18 and September 26, 2002, reverse auctions were held for constructing the Snohomish maintenance building and installing security fencing at the Ross Complex. BPA paid Pantellos \$15,000 and \$17,500, respectively, for these auctions. However, the auctions did not result in bids that could be accommodated in the projects' budgets, causing the project managers to either reduce project scope and use normal contracting to select a vendor (Snohomish), or to use BPA employees to do the work (Ross Complex). Based on subsequent discussion with Glenn Nishida, Ms. Swann said she concluded that Pantellos charged BPA for services it did not provide. However, Mr. Nishida said that he meant only to question whether it was appropriate for BPA to charge requisitioners for auction services that did not result in contracts.

#### Concerning consolidation of the Pantellos contracts

On July 20, 2004, after reorganizing its procurement supply functions into a new Supply Chain organization, Ms. Scholl, selected a new e-commerce team and appointed a new Pantellos CO. The CO consolidated Pantellos contracts 4258 and 8341 into contract 17960. This contract was prepared in accordance with the BPI and was written as a non-commercial contract. The contract file contains an award justification, including a "unique source explanation."

#### D. Conclusions Regarding Any Violations of Laws, Rules or Regulations

From the investigation results, BPA has concluded that no violations of laws, rules or regulations occurred involving the Pantellos contracts, but that some aspects of Ms. Swann's allegations correctly pointed to deviations from BPA policies and procedures during 2001-2003.

##### 1. Allegation that BPI requirements for competitive award not met.

During the e-commerce evaluation process, BPA considered several e-commerce vendors and other business issues before selecting Pantellos, as discussed on page 2. This meets BPI 11.6(a) requirements for "meaningful competition," which means "comparison, on a transaction-by-transaction basis, of offers for products or services from two or more firms that the CO determines, in his/her sole judgment, will provide BPA the best buy." BPI 11.6(b) notes that "such comparison does not necessarily require direct contact, provided the information required to make the comparison is available from sources such as recent competition, the marketplace, or others." Since the decision to award the initial contract to Pantellos was based on objective, value-based criteria and included consideration of other e-procurement vendors, there was no violation of BPI award requirements.

##### 2. Allegation that BPA did not document support for initial award.

The allegation that proper documentation was not prepared to support the initial contract award was correct. Mr. Gable was not sufficiently aware of the efforts of Ms. Scholl and others and did

not prepare documentation before making the award. The award did not comply with BPI 12.8.2. However, the investigation confirmed that BPA determined its e-procurement needs, determined they were best met by a vendor who served utilities, conducted market research to identify qualifying vendors, and decided Pantellos was the best choice to meet the requirements. The CO's incomplete contract file and omissions did not invalidate the process or the award.

3. Allegation that fee reasonableness not determined and fee not fair and reasonable.

Ms. Swann alleged that the CO did not determine the reasonableness of the \$20,500 monthly fee, and that her own best buy analysis of e-commerce service providers showed it was not fair and reasonable. She is correct that the CO did not determine fee reasonableness, for either the initial contract monthly fee of \$7,000 or the subsequent fee increases. However, other BPA officials determined fee reasonableness. As shown on page 2, officials considered total e-commerce implementation costs to BPA for various vendors prior to the initial award. Also, subsequent fee increases for added services were judged fair and reasonable by Ms. Chipman, team lead for BPA's e-commerce/Pantellos implementation team, who negotiated the contract modifications discussed on page 3.

Ms. Swann's analysis showing lower fees for selected General Services Administration (GSA) e-procurement vendors did not include total cost considerations or added services costs. Also, these vendors do not specialize in serving utilities, as does Pantellos. This was an important selection factor for BPA. Moreover, BPA has independent procurement authority and was entitled to rely on its own assessment in making the Pantellos award decision.

4. Allegation that monthly fee does not offset reverse auction fees.

This allegation is correct, but the lack of offset is entirely appropriate because the monthly fees were unrelated to the reverse auction services. Monthly fees under contract 4258 gave BPA the right to use Pantellos e-procurement website and system, to receive Pantellos' consulting and training services, and to have its employees use the Pantellos website for on-line purchases from blanket contracts established with BPA vendors. Meanwhile, contract 8341 reverse auction charges are for services outside the scope of contract 4258 whereby Pantellos connects and coordinates its system to selected vendors' systems, sets-up the electronics for viewing each auction, conducts/facilitates the auction, and bills for each auction separately to allow charge back to requestors.

5. Allegation that BPA paid for two reverse auctions that Pantellos did not perform.

This allegation is incorrect and appears to result from miscommunication between Ms. Swann and Mr. Nishida. Pantellos did provide services for the maintenance building and security fencing reverse auctions mentioned on page 4. These services included conducting the auctions and supporting the auction process by getting vendors trained and set up to participate and providing auction reports to assist in the price evaluation process. Mr. Nishida said that his

comments to Ms. Swann were meant not to question whether Pantellos provided services, but to question whether BPA should charge requestors for reverse auctions that don't lead to a procurement.

6. Allegation that initial contract did not conform to BPI because it lacked BPI clauses.

Because contract 4258 was a commercial type contract, which the BPI allows, this allegation raised by Ms. Swann during the investigation is incorrect. The BPI encourages use of both commercial and non-commercial (government) contracts. The latter contain standard BPI clauses to protect the interests of BPA, but commercial contracts need not include these clauses (BPI 6.7 and 11.7.1.2(f)). Mr. Gable was warranted for both contract types and it is BPA policy to use commercial contracts in contracting with EPRI, as discussed on pages 2 and 3.

In summary, the investigation found that no laws, rules, or regulations were violated. However, it confirmed several deviations from BPA policy and procedures by the CO and COTR. The CO did not prepare a document of award decision for the initial contract, did not maintain complete contract files, and did not learn the reasons for fee increases and write adequate explanations for two modifications involving the increases. Meanwhile, the COTR negotiated contract modifications without the knowledge or consent of the CO, and directed Pantellos to conduct reverse auctions without advising the CO or obtaining a pre-work contract release.

Actions Taken and Planned

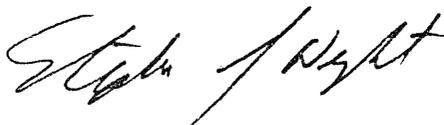
The deviations identified occurred during February 2001 through March 2003. Since then BPA has taken and planned several actions to assure better compliance with BPA procurement policies and procedures, as listed below. Most of these actions result from periodic reviews of procurement actions by BPA's Head of Contracting Activity and from other BPA management evaluations, which found deviations on some other contracts similar to those identified on the Pantellos contracts.

- The Supply Chain organization issued Procurement Operating Procedure (POP) 04-1 on January 22, 2004. It establishes additional requirements for use of contract strategy panels on new procurements over \$1 million.
- The Supply Chain organization issued POP 04-5 on June 24, 2004. It includes guidance and procedures for internal quality review of documentation before issuing a solicitation and awarding contracts/purchase orders, amendments/revisions to same, and other procurement instruments.
- The HCA issued BPI Update 04-1 on September 30, 2004. It revised BPA policy on ratifying unauthorized commitments, using procurement strategy panels, and including BPA Risk Management staff at key procurement stages.

- A COTR training and certification program is being developed and should begin implementation by the end of FY 2005 to help assure COTRs understand their contracting roles and responsibilities. Training will include emphasizing that only the warranted CO assigned to a contract has authority to negotiate contract modifications.
- The HCA and Supply Chain organization are revising the CO certification/warrant program to assure that COs understand their responsibilities and have the appropriate skill levels for the contracts they are responsible for. Full implementation is expected by fiscal year 2008.
- Many of Mr. Gable's contracts were reassigned to balance his workload with that of other COs. To provide better oversight of his contracts, he was assigned to work under the guidance of a team of senior COs.
- The HCA's next review of BPA procurement actions will include all active Pantellos contracts.

I believe that the above actions have and will continue to improve BPA's procurement program, and that they fully respond to the issues identified in the investigation. I will continue to closely monitor their ongoing effectiveness.

Sincerely,



Stephen J. Wright  
Administrator and Chief Executive Officer

cc:

Catherine A. McMullen, U.S. Office of Special Counsel