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**Analysis of Disclosures, Agency Investigation and Reports, Whistleblower Comments, and  
Comments of the Special Counsel**

**OSC File No. DI-04-1279**

**Summary**

The disclosures in this matter were made by Ms. Ramona Swann, a Public Utility Specialist with the Department of Energy, Bonneville Power Administration (BPA). Ms. Swann has been employed in the federal contracting and logistics field for 25 years. In May 2002, she transferred from her position as Administrative Services Division Director and Head of the Contracting Activity for the U.S. Department of Agriculture, Food and Safety Inspection Service, and became the Performance Manager for Construction Services and Field Purchasing, Transmission Business Line/Supply Chain Operations Center, BPA.

Ms. Swann disclosed to the Office of Special Counsel (OSC) that a contract BPA awarded to Pantellos Group Limited Partnership (Pantellos) did not comply with Bonneville Purchasing Instructions (BPI).<sup>1</sup> She alleged that required contract documentation did not exist, that the existing documentation did not support the non-competitive award of the contract, the contract fees were not determined to be fair and reasonable, and that BPA paid the contractor \$32,500 for services not performed.

The BPA Internal Audit Division investigated Ms. Swann's allegations and found that no laws, rules, or regulations were violated. It did confirm, however, that there were several deviations from BPA policy and procedures by the Contracting Officer (CO) and the Contracting Officer's Technical Representative (COTR). The agency report states that "[t]he 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 the fee increases and write adequate explanations for 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."

OSC finds that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

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<sup>1</sup> According to Ms. Swan, the BPI establishes BPA-wide policies and procedures for the purchase of supplies and services by BPA.

### The Whistleblowers' Disclosures

Pantellos is a supply chain services company for the utility and energy services industries. It conducts enterprise sourcing, e-procurement, contractor services management, e-settlements, and solutions delivery and support. Ms. Swann reported to OSC that, between April 2001 and January 2003, BPA paid \$559,659.16 to Pantellos. That sum includes \$20,900 per month for membership in Pantellos' e-procurement system. She also reported that the monthly fee is a "base fee" that did not offset any subsequent fees charged by Pantellos for conducting on-line reverse auctions for BPA. Thus, the \$599,659.16 sum also includes reverse auction fees – ranging from \$17,500 to \$50,750 per auction – paid to Pantellos.

As Performance Manager, Ms. Swann supervised contracting officers and monitored BPA contracts. In the spring of 2003, pursuant to her Performance Manager duties, she had reason to question the scope of the services that Pantellos was to provide for the \$20,900 per month it was receiving. When Ms. Swann tried to review the documentation supporting the award to Pantellos, however, she was unable to locate the contract file. She then questioned Contract Specialist Bob Gables, who was the contracting officer for the Pantellos contract, about the manner in which the contract was awarded. Mr. Gables informed her that 1) he did not know whether the Pantellos contract was awarded competitively or non-competitively, 2) he did not make a determination regarding the reasonableness of Pantellos' \$20,900 monthly fee, 3) no one provided him with justification to support the award to Pantellos as a non-competitive contract, and 4) Supply Chain Office Chief Ann Scholl had directed him, in March 2001, to write the contract for Pantellos. Next, Ms. Swann asked Ms. Scholl about the Pantellos contract. Ms. Scholl directed her to speak with Supervisory Contract Specialist Judith Chipman. When Ms. Swann did so, Ms. Chipman denied having knowledge of the manner in which the Pantellos contract had been awarded and did not provide the documentation used to support the award.

Ms. Swann reported that, according to the BPI, documentation supporting a competitively awarded contract must include: 1) an explanation of decisions made at key milestones in the purchasing process regarding the sources solicited and the source awarded the contract, i.e., "source determination," 2) the basis for determining that the offer selected for negotiations and award is reasonable, including analysis of price/estimated cost, and total cost, i.e., "best-buy analysis," 3) cross-references to other supporting documentation, if applicable, 4) the date and the name of the person preparing the documentation, and 5) a summary of the contracting officer's briefings to purchasing management at major decision points to provide key information regarding offer evaluation and source selection on high-risk and mission critical awards. See BPI 12.8.2(b).

She also reported that the BPI allows the non-competitive award of a contract only where BPA is purchasing supplies or services from the only feasible source that can meet BPA's requirements, i.e., a "unique source." When using unique sources, no other sources need be considered, but the contracting officer is responsible for including in the contract file an explanation of a) the nature of the unique source and b) why other sources were not considered. See BPI 11.7.2(a) and (b). Her analysis of the contract determined that Pantellos was not a unique source and did not qualify to be non-competitively awarded a contract, and that the monthly fee of \$20,900 paid to Pantellos was not fair and reasonable.

Ms. Swann also reported to OSC that in December 2002, BPA paid Pantellos \$15,000 for allegedly conducting the "Snohomish Reverse Auction" and \$17,500 supposedly for "security fencing." She believed that these services were not performed.

In short, Ms. Swann reported to OSC that, despite all of her efforts, she has been unable to locate any documents supporting the award of a contract to Pantellos, and, therefore, she does not believe such documentation was ever created, as is required by the BPI. Moreover, her best buy analysis indicates that, had BPA complied with the BPI, no contract would have been awarded to Pantellos. For these reasons, she alleges that the agency has failed to comply with the BPI's contracting procedures.

### **Bonneville Power Administration Report**

The BPA Internal Audit division conducted the investigation of Ms. Swann's allegations. The investigation included interviews of all of the individuals mentioned in OSC's referral, as well as BPA's Head of Contracting Activity and the BPA attorney who reviewed the draft of the initial Pantellos contract. According to the report, the agency reviewed the electronic and hardcopy documentation for the Pantellos contracts.

The agency report contains a summary of the information resulting from the investigation, divided into seven specific events or issues involved in the allegations. These included 1) BPA's evaluation of e-commerce as a cost reduction measure and the identification of Pantellos as a potential candidate; 2) the selection of Pantellos and the creation of the contract; 3) the administration of the Pantellos contract; 4) Pantellos' use of reverse auctions and catalog purchasing services; 5) the contract documentation regarding fee increases; 6) charges for work not performed; and 7) the consolidation of the Pantellos original contract with subsequent contract amendments.

According to the agency report, the investigation did not substantiate Ms. Swann's allegations that violations of law, rule, or regulations occurred in the award or administration of the Pantellos contracts. It did find, however, that some aspects of Ms. Swann's allegations correctly pointed to deviations from BPA policies and procedures during 2001-2003, as discussed below.

The report found that although the CO did not directly contact other e-commerce vendors during the consideration of the contract award, the decision to award the contract to Pantellos was based on objective, value-based criteria. In this case, there was no violation of BPI award requirements. In connection with this allegation, the agency confirmed Ms. Swann's allegation that the CO did not prepare proper documentation to support the initial contract award. The award did not, therefore, comply with BPI 12.8.2. But, because 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.

According to the agency report, Ms. Swann's allegation that the CO did not determine fee reasonableness, either for the initial monthly fee of \$7,000 or the subsequent fee increases, was accurate. The agency investigation found that other BPA officials did determine reasonableness, and that the initial and subsequent fees were judged to be fair and reasonable. The report states that Ms. Swann's analysis showing lower fees for GSA e-procurement vendors did not include total cost considerations or added services costs. In addition, the vendors reviewed by Ms. Swann do not specialize in serving utilities, as does Pantellos. This was an important selection factor for BPA. Finally, the report states that BPA has independent procurement authority and was entitled to rely on its own assessment in making the Pantellos award decision.

Ms. Swann's allegation that the monthly fee does not offset the reverse auction fees was found to be correct, according to the report. The report states that although this is true, the lack of offset is entirely appropriate because the monthly fees were unrelated to the reverse auction services. The monthly fees gave BPA the right to use the 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, the reverse auction charges in question were for services outside the scope of the monthly contract.

The agency report found that Ms. Swann's allegation that BPA paid for two reverse auctions that Pantellos did not perform was incorrect. The agency report stated that Pantellos did provide services for the maintenance building and security fencing reverse auctions. Contracting Specialist Glen Nishida reported to investigators that he did question whether BPA should charge requestors for reverse auctions that don't lead to a procurement, but not whether, as Ms. Swann claimed, Pantellos actually provided services.

Finally, the report did not substantiate Ms. Swann's allegation that the initial contract did not conform to BPI because it lacked BPI clauses. According to the report, the Pantellos contract was a commercial-type contract, which the BPI allows. The BPI encourages the use of both commercial and non-commercial contracts. Commercial contracts need not include the standard BPI clauses (BPI 6.7 and 11.7.2(f)). The CO was warranted for both contract types, and BPA policy encourages the use of commercial contracts for Electronic Power Research Institute (EPRI) contracts such as the Pantellos contract.

In summary, according to the agency report, the investigation found that no law, rules, or regulations were violated. The report confirmed several deviations from BPA policy and procedures by the CO and the 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.

As a result of the investigation and the identification of deviations from BPA policy, BPA has taken and planned several actions to assure better compliance with BPA procurement

policies and procedures. In investigating Ms. Swann's allegations, BPA found deviations on some other contracts similar to those identified on the Pantellos contracts.

BPA 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. POP 04-5 was issued 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 Head of Contracting Activity 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.

The agency is developing a COTR training and certification program to begin by the end of FY 2005. This is intended to help assure that COTRs understand their contracting roles and responsibilities. Training will emphasize that only the warranted CO assigned to a contract has authority to negotiate contract modifications. The agency is also revising the CO certification/warrant program to assure that COs understand their responsibilities and have the appropriate skill levels for the contracts for which they are responsible. Finally, the agency reassigned Mr. Gable's contracts to balance his workload, consistent with that of other COs. He was also assigned to work under the guidance of a team of senior COs. In the future, the HCA's next review of BPA procurement actions will include all active Pantellos contracts.

### **The Whistleblower's Comments**

The Whistleblower did not comment on the agency's report.

### **Conclusion**

Based on my review of the original disclosures and the BPA report, I have determined that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.