

AUDITEE RESPONSE TO DRAFT REPORT



Creating Workforce SolutionsSM for the San Diego Region

November 17, 2006

Mr. Ralph McClane
Assistant Regional Inspector General
Office of Inspector General
71 Stevenson Street
Suite 720- Office of Audit
San Francisco CA 94105

Dear Mr. McClane:

San Diego Workforce Partnership's response to the final draft of the Office of Inspector General's Audit, dated October 10, 2006, is attached. While Workforce Partnership does not agree with all of the findings of the OIG auditors, I want to assure you that the staff and members of Workforce Partnership's Board of Directors takes each of the findings very seriously, and we are committed to resolving any outstanding issues as expeditiously as possible. I believe that you will find our responses to the OIG's findings to be thoughtful and thorough.

As you know, this has been a long and difficult process. However, I would be remiss if I did not compliment the professionalism of the OIG staff that spent so many months at our offices. Throughout the process they kept an open mind, and were always willing to listen to our explanations. I also want to thank the OIG for what I feel is a very balanced and fair audit report. Again, while *Workforce Partnership does not agree with all of the findings, I do appreciate the way in which the findings were presented, as well as the fact that the OIG included the strengths of our monitoring system and the work of our Independent Auditor.*

Thank you for your patience. We look forward to receiving the final audit report .

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence G. Fitch".

Lawrence G. Fitch
President & CEO

Attachment

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Executive Summary
San Diego Workforce Partnership (SDWP) Response

Since receiving the draft audit report from OIG, SDWP has been carefully reviewing it and evaluating the findings. SDWP has reviewed its internal procedures where applicable and has taken corrective action steps that were deemed appropriate (discussed in detail in the body of SDWP 's response). SDWP will actively work with the Office of Inspector General, the National and Regional Offices of the Department of Labor, and The California Employment Development Department (EDD) to resolve these issues. It is SDWP's intent to resolve these issues as quickly as possible.

Finding 1.

Some SDWP grant costs were not accurate, allowable or allocable.

Finding 1a.

Unused building space, early lease termination, and excessive rent

SDWP Response

SDWP respectfully submits that it did not misinterpret applicable rules and regulations regarding building space.

Background

The Metro Career Center located on Aero Drive consisted of 53,000 square feet including 17,812 square feet of space occupied by the San Diego Community College District. This is important to note because originally the San Diego Community College District was to occupy 8848 square feet of space at the Metro Career Center on University Avenue.

Also important to note is that at the time the University Avenue site was being designed all other career centers in San Diego County were operating at full capacity and the center on Aero Drive was struggling to find space to accommodate all meetings and trainings that were taking place. Further, EDD had informed the Workforce Partnership that, due to seismic requirements imposed on State agencies through an Executive Order, it could no longer occupy its space on Aero Drive, and wanted to work with SDWP in finding a new location.

Planning for 3910 University Avenue took place over a period of more than two years. EDD, Neighborhood House Association (as operator of HeadStart), and the San Diego Community College District all intended to occupy space at 3910 University Avenue. Documentation supporting each of these organizations intent to occupy space in the building is attached as SDWP Exhibit A.

The parts of 3910 University Avenue that remain empty are the childcare suite and Suite 122 – both on the first floor of the building. SDWP has not been paying rent on these spaces since August 2005. BR Workforce LLC, the owner of the building, is entering

into a direct lease with the Chicano Federation for the childcare space and SDWP is currently negotiating an amendment to the Master Lease reducing the amount of square footage for which it is responsible. Though outside the time period of this audit, SDWP feels it important to note that it has tried on multiple occasions to renegotiate its lease with BR Workforce LLC with no success.

As OIG points out, building expenses are allowable, with some exceptions, if they meet the general criteria under OMB Circular A-122 as reasonable and allocable. According to Circular A-122, a cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. A cost is allocable to a particular cost objective, such as a grant, contract, project, service, or other activity, in accordance with the relative benefits received.

SDWP respectfully contends that all expenses associated with 3910 University Avenue are allowable as all costs were both reasonable and allocable. The move from Aero Drive to University Avenue took several years to plan. As noted above, one of several major factors that lead to SDWP moving the Metro Career Center was that EDD, an integral partner in the one stop, could not continue to occupy space at the Aero Drive location because it did not meet state seismic requirements. To bring the Aero Drive location into compliance with the state seismic requirements was cost prohibitive.

During the 2-plus year planning period, SDWP lined up subleases including those with EDD, SDCCD, and Neighborhood House Association. Due to unforeseen catastrophic budget cuts both EDD and Neighborhood House Association were unable to enter into a sublease for space in the building. SDCCD was unable to enter into a sublease due to a bond proposition that precluded it from leasing space. Discussions about the possibility of condominiumizing the building so that SDCCD could purchase the entire fourth floor took place between SDCCD and the building owner at the time, San Diego Revitalization Corporation. Unfortunately, the condominiumization did not occur and SDCCD could not purchase any space.

SDWP took all reasonable steps to fill the unexpected vacant space at 3910 University, including aggressively marketing the available space to both nonprofit tenants and commercial tenants, and moving its headquarters from downtown San Diego into the City Heights building.

As for the costs of 3910 University Avenue being allocable, OMB Circular A-122 is quite clear:

4. Allocable costs.

- a. A cost is allocable to a particular cost objective, such as a grant, contract, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Federal award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

- (1) Is incurred specifically for the award.

(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or

(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

SDWP believes that the costs for the utilization of the space at 3910 University meets the above tests and therefore are allocable.

Unused Building Space

SDWP agrees with OIG that the amount of rent related to unused building space for FY 2004 was \$261,892.

In its analysis of the building space not used by SDWP after it occupied the new building from October 2004 through June 2005, OIG's calculations are incorrect. Attached as SDWP Exhibit B are SDWP's revised calculations. The reason for the difference between the two calculations is due in large part to the fact that SDWP had always planned to occupy a portion of the building (7900 square feet) that OIG did not include in its figures.

OMB Circular A-122 paragraph 21 discusses idle facilities and idle capacity. It states that the "costs of idle facilities are unallowable except to the extent that: ...

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease or dispose of such facilities."

Though SDWP agrees unused building space rent for FY 2004 and agrees to its revised number for FY 2005, SDWP maintains that other than the vacant retail space, all other space should be treated as idle facilities under OMB Circular A-122 paragraph 21 subpart 2 and the costs should be allowed. As stated above, the causes of the idle facilities were such that they could not have reasonably been foreseen.

Early Lease Termination

SDWP concedes that the cost to terminate the lease for 1551 Fourth Avenue was \$242,023. However, SDWP considers these costs as allowable as they were reasonable at the time they were incurred and were allocable. Because of the unexpected changes with building tenants, SDWP was forced to decide between paying rent on two spaces, one of which would have been indefinitely vacant, or terminating the lease at 1551 Fourth Avenue and moving its administrative/corporate headquarters to 3910 University. Based on the circumstances prevailing at the time, the decision to terminate the lease at 1551 Fourth Avenue was reasonable and allocable.

Excessive Rent

On a pure square footage basis, SDWP does occupy more space at 3910 University Avenue than it did at 1551 Fourth Avenue. The space at 3910 University Avenue contains additional meeting room space, a computer-training lab, and storage space. Prior to the move to 3910 University Avenue, many meetings were held off-site due to

lack of meeting space, including a monthly all staff meeting, and off-site storage space was utilized. A more accurate comparison of space is to look at the entire 4th floor of University Avenue versus the entire space at 1551 Fourth Avenue, which shows a decrease in space for SDWP administrative offices. This comparison produces the results below in the revised Rent Analysis chart.

Rent Analysis

Previous Building 1551 4th Avenue		Current Building 3910 University Avenue		Change
Monthly Rent	\$37,638	Monthly Rent*	\$37,768.26	Less than 1/2 % increase
Total Area Occupied	24,600	Total Area Occupied	16,638	32% decrease
Total Employees (as of May 2004)	71	Total Employees (as of October 2004)	67	6% decrease
		Total Employees (as of February 2006)	56	21% decrease

**In order to compare apples to apples, the previous building rental should be compared against only the fourth floor rent. SDWP relocated staff from 1551 Fourth Avenue to 3910 University Avenue. At that time, SDWP was already occupying space on floors 1-3.

OIG Recommendations:

We recommend that the Assistant Secretary for Employment and Training:

1. Recover \$773,380 as the cost of unused building space.
2. Require SDWP to implement procedures so that only allocable building space cost is charged to DOL grants.
3. Recover \$242,023 associated with the cost of early lease termination.
4. Recover \$266,400 paid as excessive rent.
5. Perform a space utilization study to determine if SDWP was utilizing its space properly.

SDWP Responses to OIG Recommendations:

1. As to Recommendation 1, SDWP respectfully corrects OIG's calculations regarding the unused building space for FY 2005, as indicated on SDWP Exhibit B. The largest amount of cost that OIG can question is \$703,881.55, as opposed to the \$773,380 OIG has listed. However, based on the discussions above, SDWP believes that the \$703,881.55 is allowable as the costs were both reasonable and allocable. SDWP concedes that the rent associated with the vacant retail space may be unallowable. The rent associated with this space is \$134,119. SDWP respectfully asks that OIG reduce the questioned cost to \$134,119, which SDWP

agrees to resolve through the formal Department of Labor Audit Resolution Process.

2. As to Recommendation 2, SDWP respectfully submits that it has procedures in place to ensure that only allowable building space is charged to DOL grants and requests that OIG consider this recommendation resolved.
3. As to Recommendation 3, SDWP believes that the \$242,023 associated with the early lease termination should stand. The costs were both reasonable and allocable. However, SDWP agrees to resolve this issue through the formal DOL Audit Resolution Process.
4. As to Recommendation 4, SDWP offers that the cost associated with excessive rent is minimal when comparing apples to apples as stated above and as shown in the revised Rent Analysis chart. The cost of the monthly rent for the administrative/corporate office space at 3910 University Avenue is \$37,768.26 as compared to \$37,638. The difference between the two rents is minimal and SDWP respectfully requests that it not be classified as excessive rent and that the charges be allowed to stand.
5. SDWP respectfully suggests that a space utilization study is not necessary. The only vacant space at 3910 University is Suite 122 – for which SDWP stopped paying rent in August 2005. Should the Assistant Secretary for Employment and Training deem a space utilization study necessary, SDWP will cooperate fully.

Finding 1b.

Equipment Purchase-Sale-Leaseback transaction

OIG Recommendations:

6. We recommend that the Assistant Secretary for Employment and Training: Recover the \$216,850 in additional lease costs.
7. Determine the appropriate allocation to DOL grants based on depreciation for the \$1.1 million equipment purchase price over the useful life of the equipment and software and adjust costs claimed accordingly.

SDWP Response to OIG Recommendations:

6. As to Recommendation 6, of the \$216,850, SDWP has determined that \$157,000 represents interest charges. SDWP concurs that the \$157,000 may not be an allowable cost under OMB Circular A-122 Paragraph 43(b). As to the remaining \$59,850, SDWP believes at least some portion of that represents sales tax that would have been paid on the transaction whether it took the form of a purchase or a lease and that sales tax is an allowable expense. Therefore, SDWP respectfully requests that the OIG reduce the

questioned amount under this recommendation to \$157,000, which SDWP agrees to resolve through the formal DOL Audit Resolution Process.

7. As to Recommendation 7, SDWP respectfully contends that the vast majority of the almost \$1.1 million equipment purchase was properly allocated as expenses to DOL grants.

Of the \$1,070,754.61, \$532,668.60 represents costs associated with development services. Services do not constitute a capital asset and therefore were properly expensed over the three-year lease. Another \$460,259.24 of payments represents costs for software purchase, licenses and support. Information technology equipment and systems are listed as examples of “general purpose equipment” (See OMB Circular A-122, Attachment B, paragraph 15, section a(4)) and “capital expenditures for general purpose equipment are unallowable as direct charges, except where approved in advance by the awarding agency.” (See OMB Circular A-122, Attachment B, paragraph 15, section (b)(1).) Therefore, SDWP is correct in expensing the costs associated with these types of equipment and systems and should not have capitalized and depreciated it.

Of the remaining \$77,826.77, \$12,185.79 is from hardware purchases of less than \$5000 and support, both of which were properly expensed. The final \$65,640.98 was spent on hardware purchases of over \$5000. While SDWP agrees that this amount should have been capitalized as these purchases do represent capital assets, it feels that the useful life of this equipment was three years and therefore the issue of whether or not it should have been depreciated is irrelevant. See SDWP Exhibit C for details on all payments under this lease-back transaction.

Further, all of the software and equipment under this transaction was used to support DOL-funded programs, and benefits accrued back to DOL, thus making the expenses allowable. Therefore, SDWP respectfully requests that OIG consider this issue to be resolved. However, if necessary, SDWP is willing to agree to resolve the \$65,640.98 in equipment over \$5,000 through the formal DOL Audit Resolution Process.

Finding 1c.
Unrecognized program income associated with charter, cash match, and conference fees

SDWP Response

While SDWP may not have considered funds from charter fees, cash match fees or Workforce Summit revenue as program income; the funds were in fact used for programs in San Diego County and were spent for allowable expenses.

Charter Fees

SDWP has completed an analysis of Charter Fees by fiscal year and has attached it, along with backup General Ledger documentation, at SDWP Exhibit D. SDWP agrees that a total \$1,055,178 of revenue was collected for the periods of FY 00-01 through FY 05-06. However, the funds were not necessarily collected or expensed during each of the fiscal years for which they were identified.

As SDWP Exhibit D shows, the revenue received was reduced by revenue refunded to organizations that were not selected as operators of the One Stop Career Centers and by revenues that were transferred to programs and into the cash match fee account. In this instance some of the fees were improperly recorded initially and SDWP's finance department has corrected and properly adjusted these accounts.

SDWP Exhibit D also shows additional expenses that were not reflected in OIG's analysis on page 15 of the draft audit report. It is important to note that the scope of OIG's audit ended on 6/30/2005 and that during FY 05-06 an additional \$483,625.50 was paid out for program purposes (\$478,216.79 of which was allocated to the One Stop Career Centers). As of 6/30/06, the Charter Fee account has a balance of \$83,737.51. SDWP would appreciate OIG reviewing SDWP Exhibit D and reflecting these program costs in their audit report.

Cash Match Fees

SDWP spent the Cash Match Fees on program-related activities. SDWP agrees that \$271,687 was collected between FY 03-04 and FY 04-05 and that the balance in the Cash Match account at the end of FY 04-05 was \$129,387.58. However, SDWP does not agree with the column on page 16 of the draft audit titled Reimbursements to One-Stop Operators. SDWP has provided a revised Analysis of Cash Match Fees by Fiscal Year Chart and back-up GL documentation – See SDWP Exhibit E.

Also here, because OIG's audit period ended 6/30/05 payments made to One Stop Career Center operators after 6/30/05 are not reflected in the draft audit. SDWP distributed \$126,996.84 to One Stop Career Center operators during FY 05-06 and the Cash Match account has a balance of \$2390.74 remaining. SDWP would appreciate OIG reviewing SDWP Exhibit E and reflecting these costs in their audit report.

Workforce Summit Revenue

SDWP respectfully disagrees with OIG's assertion that \$100,119 was not spent on Workforce Summit expenses. SDWP has retained only \$11,846.44 related to the Workforce Summit. See SDWP Exhibit F for details. SDWP would appreciate OIG reviewing the information contained in SDWP Exhibit F and updating their audit report.

SDWP received two separate grants from EDD to help fund the Workforce Summit events. The first grant received (5263 FY03-04) was for \$92,337.00 and the second grant received (5264 FY04-05) was for \$250,000.00, totaling \$342,337.00. SDWP also collected registrations and sponsorships (non-grant revenue) for both events in the amount of \$211,592.33. Therefore, SDWP had combined total revenue of \$553,929.33.

The Summit events generated a total of \$357,796.79 in expenses. SDWP used \$158,050.90 (\$92,337.00 from 5263 and \$65,713.90 from 5264) in grant revenue and \$199,745.89 in non-grant revenue to pay for these expenses. Therefore, by subtracting the \$357,796.79 in expenses from the \$553,929.33 in revenue, the balance is \$196,132.54 in revenue. However, of the \$196,132.54 in remaining revenue, \$184,286.10 (\$250,000 – \$65,713.90) in grant revenue was carried over into FY05-06 for other programs within the grant budget, which leaves an available balance of \$11,846.44 in unused money as of 06/30/2005.

The \$11,846.44 can also be calculated by subtracting the non-grant expenses of \$199,745.89 from the non-grant revenue of \$211,592.33.

OIG Recommendations:

8. OIG recommends that the Assistant Secretary for Employment and Training: Require SDWP to account for the net charter fees of \$731,983, net cash match fees of \$129,388, and net economic summit revenue of \$100,119 as net program income totaling \$961,490 and require that those funds be put to better use for allowable program purposes.

SDWP Response to OIG Recommendation:

8. As to Recommendation 8, as noted above, SDWP feels that, regardless of how the net income from charter fees, cash matches and the annual Workforce Summit is classified, the funds were, in fact, spent on allowable WIA program activities, including those activities required under section 117(d) of the Act. However, SDWP continues to respectfully disagree with the OIG that the revenue from the charter fees, cash matches and the Workforce Summit should be treated as program income.

The history of SDWP charging charter fees began with the early discussion on developing legislation to replace the Job Training Partnership Act. In numerous meetings with then-Assistant Secretary of ETA Doug Ross, Mr. Ross often recommended that local workforce areas treat the developing one-stop systems in their areas as 'franchises,' and that the local areas could levy "franchise fees."

During the early implementation phase of the Workforce Investment Act, numerous models were tested for leveraging resources, including the City of Boston developing a Request for Business Plan approach, and the charging of charter fees to one-stop operators. The fees were \$75,000 per center. The Boston model was the approach SDWP decided to adopt. (The issue of whether SDWP violated procurement procedures by

requiring charter fees and cash matches will be addressed in Finding 2a/Recommendation 13.)

SDWP maintains that both OMB circular A-110 and 29 CFR 95.22 allow charter fees to be collected, and that those fees should not be considered program income:

(e) Unless DOL's regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees.

In fact, local governments and non-profit joint-powers agencies (as is SDWP) that receive federal funds do charge various franchise-type fees (cable TV, port fees, airport fees, etc.) that are then used as general revenue. As SDWP feels the one-stop model developed by it is unique, SDWP takes the position that 95.22 should apply to charter fees.

SDWP also believes the cash matches from non-federal sources should not be considered program income, but be seen as a vehicle to pay for the non-federal portion of the work being done in the one-stops, and as an opportunity to begin building the long-term sustainability of the system. SDWP believes that this interpretation is in line with the Administration's approach to leveraging resources in the President's High Growth Job Training Initiative, Community-Based Job Training Grants and the WIRED Initiatives. We respectfully submit that nothing in OMB Circular A-110 seems to indicate the cash matches meet the definition of "program income," and argues that Section 195(7)(B) of the Act would exclude cash matches as "income subject to the requirements of Section 195(7)(A)."

Finally, SDWP continues to respectfully disagree with OIG that charitable donations in the form of sponsorships to a 501 (c)(3) nonprofit corporation constitute a form of program income. There is no mention as such in OMB Circular A-110, and such an interpretation would inhibit corporations and foundations from supporting workforce development programs. As with the Charter Fees and Cash Matches above, SDWP also feels that charitable donations do not meet the program income requirements of Section 195(7)(B). Further, SDWP believes that such an interpretation is neither the intent of the Act nor in keeping with the Administration's approach to innovation. In fact, the authorizing committee in the U.S. House is considering amending the Act to clarify Congressional intent:

Sec. 195(7)(D) Notwithstanding the requirements of this or any other laws, regulations, or OMB circulars governing resource contributions to federal programs, funds received by a public or private nonprofit entity that are not described in paragraph (B), such as funds contributed by philanthropic foundations, businesses, or other private entities, shall not be considered to be income under this title, and shall not be subject to the requirements of this Act. Such private funds may be used for any initiatives, as

determined appropriate by the recipient that promote the basic interests and outcomes of this Act and the economic growth of their state and region. The use of such funds may include but not be limited to –

- (i) local leadership initiatives (such as the convening of stakeholders, brokering of services, serving as an intermediary, etc.)
- (ii) addressing the workforce investment and economic needs of the state or local community;
- (iii) the leveraging of other public and private resources for workforce initiatives; and
- (iv) new and innovative workforce strategies and initiatives.

While the recipient shall describe such privately financed activities in their annual reports, they are not required to obtain prior authorization before using such private, non-public funds.

Given the serious program policy implications of the issues raised by OIG, SDWP has requested a policy interpretation from the Assistant Secretary of the Employment and Training Administration by separate letter.

As to Recommendation 8, SDWP would respectfully request that OIG accept that in this instance the net ‘program income’ has been appropriately accounted for and consider this finding resolved. Further, SDWP requests that the Assistant Secretary issue a formal ruling on whether the charter fees, cash matches and charitable donations are to be treated as program income or unrestricted revenue. SDWP has raised this serious policy issue in a separate letter to the Assistant Secretary of Employment and Training Administration, requesting a policy interpretation.

Finding 1d.
Noncompliance with Salary Cost Distribution System Requirements

SDWP Response

SDWP has updated its timekeeping system. The updated timekeeping system now strictly complies with OMB Circular A-122 Attachment B; however, SDWP continues to assert that its prior methodology with respect to timekeeping was allowable under A-122.

SDWP acknowledges that payroll allocations based on budgeted amounts are not allowed under A-122. SDWP contends that this was not the methodology used. Employee’s payroll allocations were based on discussions with directors who gave reasonable estimates of time in percentages to the finance department. These reasonable estimates of time were reviewed when the budget was modified. Each reasonable estimate of time was based on the projects in individual departments. SDWP respectfully contends that the chart on page 19 of OIG’s draft audit entitled “Employee Time Allocation Analysis” supports its assertion that reasonable estimates of time were made. SDWP believes this methodology is allowable under A-122.

OIG Recommendations:

9. We recommend that the Assistant Secretary for Employment and Training: Analyze \$11.6 million in direct labor costs and associated charges on a grant-by-grant- basis for FY 2003 through FY 2005 and determine if these costs were reasonable for the products and services received.
10. Based upon the results of the labor cost analysis, recover any amounts determined to be unreasonable in relation to the products and services received.

SDWP Response to OIG Recommendations:

9. As to Recommendation 9, SDWP programs have been repeatedly monitored by the state and federal monitors over the years. There have been no claims that programs have not been run efficiently or that the State or Federal government disagreed that the programs were properly provided. See SDWP Exhibit G for copies of monitoring reports.

In addition, SDWP's salary costs were reviewed each time we submitted a grant application or responded to an SFP and were never deemed to be unreasonable. Finally, as noted above, and as is noted in OMB Circular A-122, Section 7. m(2)(c): "The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents *a reasonable estimate* (emphasis added) of the actual work performed by the employee during the periods covered by the reports" and SDWP believes that the methodology used meets the "reasonable estimate" requirement. However, if the Assistant Secretary wishes to conduct an analysis of these direct labor costs SDWP will provide any and all necessary documentation and cooperate in all ways to resolve this finding quickly.

Preliminary analysis of \$11.6 million in direct labor costs and associated charges on a grant-by-grant basis for FY 2003 through FY 2005 shows that 54.0% of employee labor was 100% dedicated to a single cost objective. Therefore, there was not any differentiation on their time card for the entire year. See SDWP Exhibit H for detailed time charging analysis. Additional backup documentation can be made available to OIG and/or DOL if it is deemed necessary.

10. As to Recommendation 10, SDWP believes that amounts charged to grants during FY 2003 through FY 2005 were reasonable in relation to the products and services produced and that no amount should be recovered. However, if ETA concludes in their review that adjustments are necessary, SDWP will make the necessary adjustments. SDWP respectfully requests that OIG reduce the \$11.6 million to \$5.3 million which is the most that

OIG should examine since that is the amount of labor charged to multiple grants over the period examined.

Finding 1e.
Noncompliance with Indirect Cost Proposal Requirements

SDWP Response

On September 28, 2006, SDWP submitted its final indirect cost proposals for FY 2002 through FY 2005 to the Office of Cost Determination. Please note that during FY 2002-2005 SDWP did not allocate costs based on the proposed final indirect rates but instead allocated based on actual costs incurred. Indirect costs never exceeded more than 15% of SDWP's annual budget.

The manner in which SDWP defines indirect costs has evolved over the years, with a change in methodology for FY 2006. Cost pools have been developed to identify direct relationships to certain grants, where the specific rather than indirect definition is used. For the past two years SDWP has used activity-based costing though this pooling of expenses directly linked to program activities. This has resulted in a reduction of indirect costs, developed in conjunction with the Office of Cost Determination.

SDWP believes that the "Potential Indirect Cost Overpayment" chart is not accurate given the packages submitted to the Office of Cost Determination. The \$5.9 million bears no actual relationship to the costs actually incurred and allocated by SDWP. Further, SDWP believes that no overpayment occurred. Once SDWP receives approval of the final indirect cost proposals it will take appropriate actions as necessary to reconcile its books.

OIG Recommendations:

11. Require SDWP to submit final indirect cost proposals for FY 002 through FY 2005 to DOL for approval of SDWP's indirect cost rates for those years.
12. Request the Assistant Secretary for Administration and Management to complete the review and approval of SDWP's final indirect cost rates for FY 2000 and FY 2001, and, upon receipt, process for review and approval the final indirect cost proposals that will be submitted by SDWP for FY 2002 through FY 2005.
13. Require SDWP to recalculate its indirect costs based upon the DOL approved final indirect cost rate and make adjustments as needed for any over- or under- payments.

SDWP Response to OIG Recommendations:

11. As to Recommendation 11, SDWP has complied with OIG's recommendation and on September 28, 2006 submitted its final indirect cost proposals for FY 2002 through FY 2005 to the Office of Cost Determination. The proposals were hand-delivered to the Cost Negotiator assigned to SDWP. See SDWP Exhibit I for confirmation letter from the Division of Cost Determination. Therefore, SDWP respectfully requests the OIG consider this issue to be resolved.
12. As to Recommendation 12, since hand delivering the final indirect cost proposals, SDWP has been in contact with the Cost Negotiator and believes final rates will be forthcoming. SDWP will continue to cooperate with the Cost Negotiator and will provide any additional documentation needed in a timely manner.
13. As to Recommendation 13, SDWP will ensure that all appropriate adjustments are made once final indirect cost rates are received. At this point, after a number of discussions SDWP believes that there will not be any necessary adjustments because during FY 2002-2005 SDWP did not allocate costs based on the proposed final indirect rates but instead allocated based on actual costs incurred. However, as indicated above, SDWP will continue to work diligently with the Cost Negotiator to resolve this finding.

Finding 2.

SDWP did not comply with all applicable laws and regulations.

Finding 2a.

SDWP created a barrier to competition in the procurement process for soliciting and awarding One-Stop contracts by requiring improper charter and cash match fees.

OIG Recommendation:

13. Require SDWP to stop charging charter and cash match fees as part of the One-Stop contract award process.

SDWP Response to OIG Recommendation:

13. As to Recommendation 13, SDWP respectfully disagrees with OIG that a barrier to competition was created in the procurement process for soliciting and awarding one-stop contracts by requiring improper charter fees and cash matches. As noted in the response to Finding 1c and Recommendation 8, charter fees and cash matches in and of themselves

are not ‘improper.’ Boston, among other workforce areas, has been collecting charter fees since 1998, and the U.S. Department of Labor (USDOL) has been encouraging cash matches, or ‘leveraged resources’ in its most recent procurements. For example, in DOL’s July Solicitation for Proposal release for the Community-Based Job Training grants, as announced in the July 3, 2006 Federal Register, Volume 71, no. 127, it noted that projects funded by their grants should leverage resources, and that such resources should come from both federal and non-federal sources. While USDOL did not directly require that applicants leverage resources, points were awarded in the evaluation process to applicants who did.

4. *Leveraged Resources*. Projects funded through CBJTGs should leverage resources from key entities in the strategic partnership. Leveraging resources in the context of strategic partnerships accomplishes three goals: (1) It allows for the strategic pursuit of resources; (2) it increases stakeholder investment in the project at all levels including design and implementation phases; and (3) it broadens the impact of the project itself. Applicants are encouraged to leverage significant resources from key partners and other organizations to maximize the impact of the project on the community. Leveraged resources include both Federal and non-Federal funds and may come from many sources. Businesses, faith-based and community organizations, economic development entities, education systems, and philanthropic foundations often invest resources to support workforce development. ... ETA encourages CBJTG applicants and their strategic partners to be entrepreneurial as they seek out, utilize, and sustain these resources, whether they are in-kind or cash contributions, when creating capacity building and training strategies to effectively address the workforce challenges identified by industry.

2. Linkages to Key Partners (20 Points)

The applicant must demonstrate that the proposed project will be implemented by a strategic partnership that includes at least one entity from each of four categories. ... The applicant must identify the partners by organizational name and category, explain the meaningful role each partner will play in the project, and document the resources leveraged from each partner. Collaborating partners must verify their role through a letter of commitment detailing the roles, responsibilities, and resources the partner will commit to the project. The letters of commitment must be attached to the proposal. Applicants should also identify resources leveraged from other organizations, including other workforce investment system partners. ETA encourages, and will be looking for, applications that go beyond the minimum level of partnership and demonstrate broader, substantive and sustainable partnerships. Scoring on this criterion will be based on the following factors:

- *Comprehensiveness of the Partnership (7 Points)*: The applicant must explain the meaningful role each partner will play in the project. Points for this factor will be awarded based on: (1) The degree to which each partner, including all required partners, plays a committed role, either financial or nonfinancial, in the proposed project; (2) the breadth and depth of each partners contribution, their knowledge and experience concerning grant activities, and their ability to impact the success of the project; and (3) evidence, including letters of commitment from required partners, that key partners have expressed a clear dedication to the project and understand their area of responsibility. Applications that do not have each of the four required entities represented in the partnership cannot receive full points for this factor.

As to the charter fees, SDWP feels that the provisions of Sections 118 (b) (7) and (9) of the Act are adequately met. As previously discussed with

OIG, prior to releasing the first Request for Business Plans (RFBP), SDWP held a total of ten public hearings: five throughout the county of San Diego (at least one in each region), two in front of the then one-stop committee, two before the Private Industry Council, and the final hearing before the Consortium Policy Board. At no time during these hearings did a potential bidder raise the issue of paying either charter fees or cash matches. Indeed the only significant issue raised, and the one that we were told by potential bidders caused them to drop out, was the requirement that the lead partner could not also be the one-stop training provider, a firewall that we believed to be prudent. (It should be noted that the FY 2000 charter fees were \$10,000 per center.)

While SDWP had fewer public hearings around the 2004 issuance of the Request for Business Plans (RFBP), once again there was no feedback that charter fees should not be charged. One bidder did raise a concern around the *amount* of the charter fee (on average roughly \$35,000 per center). SDWP did hear from potential bidders that they weren't sure that they should go through the expense of bidding because they were aware that the current operators were going to re-bid, and that the current operators had all exceeded performance standards.

SDWP does want to emphasize that the RFBP was not a traditional Request for Proposal that would normally be issued for a service provider. SDWP was seeking organizations that could not only run a multi-million dollar enterprise, but could prove that they could also bring other partners – not subcontractors – to the table, in addition to the seventeen mandated by the Act, and provide a true business plan on how the scope of the one-stops could be expanded. SDWP felt, and still feels, that if a bidder could not leverage \$10,000 in non-federal dollars from its partners it was/is unlikely that they would be successful. This approach seems in accordance with DOL's policy initiatives. Again, from the Community-Based Job Training Grant Solicitation for Proposals:

• *Partnership Management (8 Points)*: Points for this factor will be awarded based on: (1) The evidence of a plan for interaction between partners at each stage of the project, from planning to execution; (2) the evidence that the capacity challenge to be addressed by the grant was identified in the context of the strategic partnership; (3) demonstrated ability of the lead partner to successfully manage partnerships; (4) the ability of the partnership to manage all aspects and stages of the project and to coordinate individual activities with the partnership as a whole; (5) the robustness of the applicant's plan for sustaining the partnership beyond the funding period, and (6) evidence that the partnership has the capacity to achieve the outcomes of the proposed project.

As SDWP program performance and the many times that our one-stop system has been used as a national benchmark proves, SDWP believes that, in fact, bidders were chosen who are innovative, effective, and cost efficient.

SDWP respectfully asks that OIG clarify what question the auditors asked of the prospective bidders who now claim that they chose not to bid because of charter fee issues. Were they asked an open-ended question, e.g., “Why did you choose not to bid?” or was the question unintentionally biased, e.g., “Were the charter fees the reason you chose not to bid?”

Finally, SDWP would like to note that because of the concerns raised by OIG, SDWP stopped levying charter fees and cash matches effective July 1, 2006, and will continue to do this until the issue is resolved. Therefore, as to Finding 2a, Recommendation 13, SDWP respectfully requests that since it is no longer requiring charter fees and cash matches, that OIG consider the finding resolved. However, as with Recommendation 8, SDWP has raised this serious policy issue in a separate letter to the Assistant Secretary of the Employment Training Administration requesting a policy interpretation on the allowability of charging charter fees and encouraging cash matches from non-federal sources outside of the procurement process

Finding 2b.

SDWP did not adequately encourage the use of small businesses, minority-owned firms, or women’s business enterprises.

SDWP Response

Previously, although SDWP did not have a formal procedure for identifying small-business, minority-owned firms, and women’s business enterprises, SDWP disseminated information about its procurements to the widest possible audience through a number of other steps and feels that it complied with the spirit of the law. These other steps included the gathering of business and other potential service provider and vendor addresses for its mailing lists from various business and social service directories. A review of the mailing lists will show that small businesses, minority-owned and women’s business are included.

In addition, to reach out to all possible potential bidders, a legal public notice providing complete details on each procurement was published in newspapers of general circulation, and our website, www.sandiegoutwork.com. Bidders’ conferences were generally held and the Q&As of potential bidders were published on the website for all to read, as well as mailed to all known potential bidders. From time to time community meetings have been conducted, either at the design stage or the RFP stage, to assure that targeted organizations are fully informed. The timelines for all procurements are set to give even the smallest of potential bidders sufficient time to prepare a competitive and complete bid.

SDWP has revised its procurement guidelines in accordance with OMB Circular A-122 and implemented the specific steps to identify small business, minority-owned firms, and women’s business enterprises, and utilize their services to the greatest extent possible,

whether as a prime or subcontractor. See SDWP Exhibit J for a copy of the revised internal procurement guidelines.

OIG Recommendation:

14. Require SDWP to update procedures to comply with OMB Circular A-110's requirements for small business, minority-owned firms, and women's business enterprises.

SDWP Response to OIG Recommendation:

14. As to Recommendation 14, SDWP has revised its procurement guidelines in accordance with OMB Circular A-110 and will ensure that the revised guidelines are implemented by December 31, 2006. SDWP will ensure that steps are taken to identify small business, minority-owned firms, and women's business enterprises, and utilize their services to the greatest extent possible, whether as a prime or subcontractor. SDWP would respectfully request that this finding be considered resolved.

Finding 2c.

SDWP did not perform price or cost analyses for contracts awarded.

SDWP Response

SDWP's procurement process includes price analysis in the evaluation of proposals, but the files have been stored in separate locations (not in the procurement files). SDWP's procurement files do contain a detailed budget analysis but lack complete documentation of the cost or price analysis. However, SDWP acknowledges the need to upgrade procedures to ensure that a price or cost analysis is performed and that the findings of such analysis are fully documented.

OIG Recommendation:

15. Require SDWP to establish procedures to perform and document a cost and price analysis for each procurement.

SDWP Response to OIG Recommendation:

15. As to Recommendation 15, SDWP has already revised its internal procurement guidelines (see SDWP Exhibit J for the updated procurement guidelines) so that better documentation is maintained through the procurement cycle, and that documentation clearly demonstrates that the costs of what was procured were "reasonable, allowable, and allocable," per OMB Circular A-110 or that the price reflects best value. SDWP staff will be informed of the new procurement guidelines through in-house training seminars, to ensure that throughout the organization there is clear

and uniform understanding of the expectations of the procurement process. SDWP respectfully requests that this finding be considered resolved.

Finding 2d.

Equipment records did not contain all information required by OMB Circular A-122. Additionally, SDWP did not document their physical inventory of equipment or reconcile results to equipment records.

SDWP Response

During its site visit, OIG was unable to locate two Toshiba copiers. The two Toshiba copiers were purchased 12 years ago and were disposed of when they stopped functioning. Full depreciation on these copiers was reached in approximately the year 2000. Therefore, SDWP believes that no money is owed to DOL.

SDWP concurs with OIG's statement that it did not document its physical inventory of equipment or reconcile results to equipment records. This occurred in part because SDWP was keeping as inventory all items purchased for more than \$100. This low threshold led SDWP to have over 11,000 items in its inventory system.

SDWP requested and received approval from the State of California to adjust its inventory list so that only items purchased for \$5000 or more are tracked (see SDWP Exhibit K for correspondence between SDWP and EDD). Since receiving this approval, SDWP has conducted an inventory (see SDWP Exhibit L for a revised inventory listing) and reconciliation.

OIG Recommendations:

16. Require SDWP to update its equipment records to include all the information required by OMB Circular A-110.
17. Perform and document an equipment inventory every 2 years and reconcile the inventory to equipment records.

SDWP Response to OIG Recommendations:

16. As to Recommendation 16, SDWP has updated its equipment records to include all the information as required by OMB Circular A-110.
17. As to Recommendation 17, SDWP will perform and document an equipment inventory every 2 years and reconcile the inventory to equipment records.

SDWP respectfully requests that OIG consider Finding 2d to be resolved.