

U.S. Department of Labor

Office of Inspector General—Office of Audit

**EMPLOYMENT AND TRAINING
ADMINISTRATION**



A CONFLICT OF INTEREST EXISTED IN THE PROCUREMENT AND ADMINISTRATION OF INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT'S WORKFORCE INVESTMENT ACT CASE MANAGEMENT SYSTEM

Date Issued: December 17, 2008

Report No.: 05-09-001-03-390

BRIEFLY...

Highlights of Report: 05-09-001-03-390, *A Conflict of Interest Existed in the Procurement and Administration of Indiana Department of Workforce Development's Workforce Investment Act Case Management System*, to the Deputy Assistant Secretary for Employment and Training.

WHY READ THE REPORT

The Office of Inspector General (OIG) received an allegation through its Hotline that a conflict of interest existed when the Indiana Department of Workforce Development (IDWD) awarded a \$2.8 million contract for a new case management system to @Work Solutions. The contract was federally funded through a Workforce Investment Act (WIA) grant. Therefore, IDWD was subject to Federal regulations prohibiting conflicts of interest in procurement actions.

WHY OIG DID THE AUDIT

The OIG conducted this audit to determine whether a conflict of interest existed between IDWD's IT Director and @Work Solutions during the award and administration of the contract to provide IDWD's new case management system.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2009/05-09-001-03-390.pdf>

WHAT OIG FOUND

IDWD's IT Director had a conflict of interest while participating in the award and administration of the contract to @Work Solutions. Specifically, the IT Director had a financial interest in @Work Solutions, Inc. at the same time that he participated in IDWD's award and administration of a contract to them.

In June 2005, IDWD's IT Director sold two corporations which were subsequently combined and renamed @Work Solutions, Inc. The sale provided the IT Director an initial payment at the time of the sale and monthly installment payments through 2007. These installment payments constituted a financial interest in @Work Solutions, Inc.

After being hired by IDWD in February 2005, the IT Director initiated a request to procure a single state-wide WIA case management system. He directly participated in the development of the Request for Proposal (RFP) and bidder evaluation criteria. After IDWD awarded the contract to @Work Solutions, Inc. in April 2006, the IT Director also participated in the review and acceptance of contract deliverables.

The IT Director's receipt of installment payments from @Work Solutions, Inc. while participating in the award and administration of an IDWD contract to the company constituted a conflict of interest.

WHAT OIG RECOMMENDED

We recommended that the Assistant Secretary for Employment and Training:

Review the costs claimed by IDWD related to the contract with @Work Solutions, Inc. and recover any costs found to be unreasonable.

Ensure that IDWD strengthen its internal controls to prevent and detect conflicts of interest.

IDWD agreed to take all necessary steps to rectify the situation identified in our report.

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Executive Summary

OIG received a hotline complaint in September 2006, alleging that the former Deputy Commissioner for Information Technology, (IT Director) for the Indiana Department of Workforce Development (IDWD) had a conflict of interest when he participated in the award and administration of a contract to a company in which he held a financial interest. In April 2006, IDWD awarded a \$2.8 million contract to @Work Solutions, Inc. for the development of a new state wide WIA case management system. The contract was federally funded through a WIA grant to IDWD. As of April 2008 IDWD had expended \$1.8 million of the grant funds and the development project remains ongoing.

The objective of our audit was to answer the following question:

Did IDWD's former IT Director have a conflict of interest when he participated in the award and administration of a contract with @Work Solutions, Inc.?

Results

Yes. IDWD's former IT Director did have a conflict of interest in that he did not disclose a financial interest he held in the vendor @Work Solutions, Inc. while participating in the award and administration of the contract.

The former IT Director was hired by IDWD in February 2005 and terminated for reasons unrelated to this allegation in July 2006. When the former IT Director was hired in February 2005, he owned and operated In Touch Information Services, Inc. (an Indiana Corporation) and In Touch Information Services of Kentucky, Inc. In June 2005, he sold the two corporations which were subsequently combined and renamed @Work Solutions, Inc. The sale provided the former IT Director an initial payment at the time of the sale and monthly installment payments, paid through 2007.

Shortly after being hired by IDWD, the former IT Director initiated a formal agency request to procure a single state-wide WIA case management system. In April 2006, IDWD awarded @Work Solutions, Inc. the contract. Prior to the award, the former IT Director informed the IDWD Commissioner that a corporation he was in the process of selling would bid on the case management system contract; however, he did not inform the Commissioner that he would be receiving monthly installment payments as a result of the sale. His continuing to receive payments from @Work Solutions, Inc. constituted a financial interest in the vendor. DOL regulations and State of Indiana (Indiana) ethics rules prohibit an individual from participating in procurement actions or contract administration with a vendor in which that person has a financial interest.

During the award and administration of the contract, the former IT Director participated directly in the development of the Request for Proposal (RFP) and bidder evaluation criteria, and in the review and acceptance of contract deliverables as part of the process

to approve contractor invoices from @Work Solutions, Inc. Additionally, while the former IT Director did not serve on the evaluation panel committee, he was in a position to influence the selection as the direct supervisor of two of the panelists and as a reviewer of the evaluation committee's selection recommendation, prior to forwarding it to the selecting official.

We conclude the former IT Director had a direct conflict of interest given his participation in the award and administration of the contract, and his receiving of recurring installment payments through 2007, which constituted a financial interest in @Work Solutions, Inc. IDWD lacked sufficient internal controls to prevent or detect such conflicts of interest. Specifically, IDWD did not require employees to attend ethics training and lacked procedures requiring all state employees involved in procurement actions or contract administration to disclose personal financial interests. The effect of this conflict of interest is that IDWD awarded the contract for a new case management system in violation of the procurement requirements applicable to its use of WIA grant funds and that the contract may not have been fairly awarded or properly managed.

Recommendations

We recommend that the Assistant Secretary for Employment and Training:

1. Review the costs claimed by IDWD related to the contract with @Work Solutions, Inc. and recover any costs found to be unreasonable.
2. Ensure that IDWD strengthens its internal controls to prevent and detect conflicts of interest. At a minimum, these improvements should include:
 - a. Providing and documenting periodic ethics training for all personnel; and
 - b. Requiring all personnel involved in procurement actions (from requirement identification through final award) and contract administration to disclose external financial interests and certify that they are free from conflicts of interest.

Auditee Response

In a written response to our draft report, IDWD's Commissioner stated that IDWD takes allegations of conflicts of interest seriously and strives to avoid any appearance of impropriety. The Commissioner's response stated that IDWD would take all necessary steps to rectify the situation. Specifically, the Commissioner agreed to (a) provide any documents needed by ETA in its review of the contract costs and (b) strengthen IDWD's internal controls to prevent and detect conflicts of interest. See Appendix D for IDWD's complete response to our draft report.

OIG Conclusion

Our finding and recommendations remain unchanged. The recommendations will be resolved as part of ETA's audit resolution process.

U.S. Department of Labor

Office of Inspector General
Washington, DC 20210



December 17, 2008

Assistant Inspector General's Report

Brent Orrell
Deputy Assistant Secretary for
Employment and Training
200 Constitution Avenue
Washington, DC 20210

OIG received a hotline complaint in September 2006, alleging that the former IT Director for the Indiana Department of Workforce Development (IDWD) had a conflict of interest when he participated in the award and administration of a contract to a company in which he held a financial interest. In April 2006, IDWD awarded a \$2.8 million contract to @Work Solutions, Inc. for the development of a new state wide WIA case management system. The contract was federally funded through a WIA grant to IDWD. As of April 2008 IDWD had expended \$1.8 million of the grant funds and the development project remains ongoing.

An audit was conducted to determine whether there was a conflict of interest related to IDWD's award and administration of the contract.

We reviewed DOL and State of Indiana regulations related to procurement procedures and ethical conduct. We also reviewed available documentation related to the award and administration of the contract identified in the complaint, and selected financial records associated with the former IT Director and the contractor. In addition, we interviewed personnel from IDWD; the Indiana Department of Administration (IDOA); @Work Solutions, Inc.; and the Indiana Ethics Commission.

We conducted our audit in accordance with generally accepted government auditing standards for performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a sufficient basis for our findings and conclusions based on our audit objectives. Our audit scope, methodology and criteria are detailed in Appendix B.

Results and Finding

Objective – Did IDWD’s former IT Director have a conflict of interest when he participated in the award and administration of a contract with @Work Solutions, Inc.?

Yes. IDWD’s former IT Director did have a conflict of interest in that he did not disclose a financial interest he held in the vendor @Work Solutions, Inc. while participating in the award and administration of the contract.

Finding: IDWD’s former IT Director had a conflict of interest when he participated in the award and administration of a contract with @Work Solutions, Inc.

The former IT Director was hired by IDWD in February 2005. According to State officials he was terminated, for reasons unrelated to this allegation, in July 2006.

Former IT Director’s Financial Interest in @Work Solutions, Inc.

When the former IT Director was hired in February 2005, he owned and operated In Touch Information Services, Inc. (an Indiana Corporation) and In Touch Information Services of Kentucky, Inc. In June 2005, he sold the two corporations which were subsequently combined and renamed @Work Solutions, Inc. The sale provided the former IT Director an initial payment at the time of the sale and monthly installment payments to be paid through April 15, 2008. Although the sales agreement was paid off by the end of 2007, the former IT Director received monthly payments from the sale of In Touch throughout his tenure at IDWD.

Conflict of Interest Violations

Shortly after being hired by IDWD, the former IT Director initiated a formal agency request to procure a single state-wide WIA case management system. In April 2006, IDWD awarded @Work Solutions, Inc. the contract. Prior to the award, the former IT Director informed the IDWD Commissioner that a corporation he was in the process of selling would bid on the case management system contract. However, he did not inform the Commissioner that he would be receiving monthly installment payments as a result of the sale. His continuing to receive payments from @Work Solutions, Inc. during the procurement action and during the performance of the contract constituted an inappropriate financial interest in the vendor. DOL regulations and State of Indiana (Indiana) ethics rules prohibit an individual from participating in procurement actions or contract administration with a vendor in which that person has a financial interest.

Based on the information he received, the Commissioner concluded there was not a conflict of interest as long as the former IT Director excluded himself from the procurement evaluation committee. However, this decision was based on incomplete information regarding the former IT Director’s financial interests and involvement in the IDWD procurement process.

During the award and administration of the contract, the former IT Director participated directly in the development of the Request for Proposal (RFP) and bidder evaluation criteria, and in the review and acceptance of contract deliverables as part of the process to approve contractor invoices from @Work Solutions, Inc. Additionally, while the former IT Director did not serve on the evaluation panel committee, he was in a position to influence the selection as the direct supervisor of two of the panelists and as a reviewer of the evaluation committee's selection recommendation, prior to forwarding it to the selecting official.

The IDWD Commissioner knew the two companies for sale might bid on agency work and he directed the former IT Director to exclude himself from the evaluation team. However, this was insufficient to remove the conflict of interest since it does not appear the Commissioner was aware of the extent of the former IT Director's involvement in the contract or the former IT Directors' continued financial interest in IT Solutions.

In October 2005, IDWD developed and issued a RFP for a case management system. The RFP defined the specifications of the desired system and the criteria that would be used to evaluate the proposals submitted. E-mails and interviews with IDWD employees, including the former IT Director, confirmed that the former IT Director participated in developing the RFP.

Although the former IT Director was not the selecting official on this procurement action, the evaluation committee forwarded its recommendation that @Work Solutions, Inc. be awarded the contract in a memorandum to him on February 20, 2006. Knowledge of the committee's actions prior to a final contract award provided the former IT Director the opportunity to influence the final decision.

After IDWD awarded the contract to @Work Solutions, Inc. in April 2006, the former IT Director was directly involved in administering the contract. E-mails from the IDWD project manager show that the former IT Director reviewed contract deliverables provided by @Work Solutions, Inc. as part of the process for approving contractor invoices.

Officials we interviewed at IDWD and the State Ethics Commission stated that it was the responsibility of the former IT Director to submit a potential conflict of interest in writing to the State Ethics Commission. Additionally, a State procurement official stated that he would have removed the former IT Director from the procurement process if he had known about the potential conflict of interest.

DOL and State of Indiana Ethics Regulations

Under provisions of WIA, DOL required IDWD to establish contracts paid for with federal funds in accordance with federal procurement rules. Specifically, Title 29 of the Code of Federal Regulations (CFR), sub-section 97.36 (b), states:

Grantees and sub grantees will use their own procurement standards which reflect applicable state and local laws and regulations provided that the procurements conform to applicable Federal laws and standards identified in this section.

Further, 29 CFR 97.36 (b) (3) states:

No employee, officer or agent of the grantee or sub grantee shall participate in the selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) The employee, officer, or agent...has a financial or other interest in the firm selected for award.

Indiana regulations prohibit employees with a conflict of interest from being involved in a procurement process or from approving invoices after the contract has been awarded. Indiana Administrative Code (IAC) regulation 42 IAC 1-2-1, Section 1. (c)(4)¹, states:

Actions, transactions, or involvement should not be performed or engaged in which have the potential to become a conflict of interest.

In addition, Indiana ethics rules prohibit state officials from having a financial interest in entities that do business with the state. 42 IAC, 1-5-7, (a)² states:

Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.³

Internal Control Weaknesses

The former IT Director's conflict of interest was not reported or detected due to internal control weaknesses. Specifically, the former IT Director had not been trained regarding state ethics requirements and all IDWD personnel involved in procurements and contract administration were not required to disclose external financial interests.

When the former IT Director was hired by IDWD, the Indiana Ethics Commission had a rule that required (a) all new employees to participate in ethics training within 6 weeks of starting employment with an agency, (b) all employees to receive ethics training every two years, and (c) agencies to maintain documentation of compliance with the ethics training requirements.

¹ Prior to January 2006 this regulation was contained in 40 IAC 2-1-3, Section 3(c)(5).

² Prior to January 2006 this regulation was contained in 40 IAC 2-1-9.

³ Subsection (b) discusses circumstances where this section does not apply. None of the exceptions apply to this matter.

The former IT Director stated he had never received ethics training while employed by IDWD and, therefore, was not aware of the State's requirements and procedures regarding conflicts of interest⁴. Although the State required that ethics training be provided to all new employees within 6 months and to all employees biannually, there was no evidence that IDWD had conducted ethics training for any employees during the former IT Director's employment tenure. In fact, there was no evidence that IDWD had conducted any ethics training for its employees between January 2005 and February 2008.

The Indiana ethics regulations do not require all state employees involved in procurement actions or contract administration to disclose personal financial interests or to certify that they are free from conflicts of interest. Only members of procurement evaluation committees are required to sign a statement that they do not have a conflict of interest with any potential vendor for that contract. Requiring any individual involved in developing, awarding, or administering a state contract to disclose external financial interests and certify their freedom from conflicts of interest would provide a more comprehensive means of potentially detecting conflicts of interest.

As a result of the former IT Director's conflict of interest, IDWD opened the possibility for questions concerning whether the WIA case management system represented the best value for the expenditure of federal funds.

We conclude the former IT Director had a direct conflict of interest, given his participation in the award and administration of the contract and his receipt of recurring installment payments through 2007, which constituted a financial interest in @Work Solutions, Inc. IDWD lacked sufficient internal controls to prevent or detect such conflicts of interest. Specifically, IDWD did not require employees to attend ethics training and lacked procedures requiring all state employees involved in procurement actions or contract administration to disclose personal financial interests. The effect of this conflict of interest is that IDWD awarded the contract for a new case management system in violation of the procurement requirements applicable to its use of WIA grant funds and that the contract may not have been fairly awarded or properly managed.

Auditee Response

In a written response to our draft report, IDWD's Commissioner stated that IDWD takes allegations of conflicts of interest seriously and strives to avoid any appearance of impropriety. The Commissioner agreed to (a) provide any documents needed by ETA in its review of the contract costs and (b) require all personnel involved in procurements to disclose external financial interests and certify they are free from conflicts of interest.

Regarding our statement that there was no evidence that employees had completed required ethics training between January 2005 and February 2008, the Commissioner stated that during the period covered by our report IDWD required employees to attend

⁴ Ethics rules were available for employees to review, as needed, through a State website.

mandatory ethics training. The Commissioner stated that as of 2008, ethics training was conducted electronically to track and ensure compliance and that 100% of IDWD's employees had completed the training in 2008.

The IDWD response is presented in its entirety in Appendix D.

OIG Conclusion

Our finding and recommendations remain unchanged. The recommendations will be resolved as part of ETA's audit resolution process.

Recommendations

We recommend that the Assistant Secretary for Employment and Training:

1. Review the costs claimed by IDWD related to the contract with @Work Solutions, Inc. and recover any costs found to be unreasonable.
2. Ensure that IDWD strengthen its internal controls to prevent and detect conflicts of interest. At a minimum, these improvements should include
 - a. Providing and documenting periodic ethics training for all personnel; and
 - b. Requiring all personnel involved in procurement actions (from requirement identification through final award) and contract administration to disclose external financial interests and certify that they are free from conflicts of interest.



Elliot P. Lewis

Appendices

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APPENDIX A

BACKGROUND

In September 2006, OIG received a complaint, (referred to the Office of Audit), alleging the IDWD's contract for a new case management system for WIA operations, awarded effective April 18, 2006, involved a conflict of interest between the agency former IT Director (Deputy Commissioner for Information Technology) and the vendor, a company the former IT Director had previously owned.

The complaint alleged that IDWD had entered into an agreement with @ Work Solutions involving \$2.8 million paid for with WIA grants from the DOL Employment and Training Administration (ETA). Additionally, the allegation indicated the purpose of the contract for a centralized case management system was unnecessary and the contracted software system was ineffective.

In preliminary work, we determined there appeared to be a conflict of interest in the procurement process, however there was no support for the allegations that the contract was unnecessary or that the case management system was ineffective. As a result, we focused our audit on the alleged conflict of interest.

Workforce Investment Act

The Workforce Investment Act (WIA) of 1998 provides Federal grants to states for job training programs. The WIA created a new, comprehensive workforce investment system and provides criteria for the creation of workforce investment areas which receive funding through the state.

Employment and Training Administration (ETA)

ETA provides federal grants for state and local government job training and worker dislocation programs. These programs are primarily delivered through state and local workforce development systems.

ETA awarded Indiana State grant AA-15478-06-55 for \$15.2 million to IDWD for administration of the WIA program and funding subrecipients. IDWD used the grant to fund the contract for a new WIA case management system.

Indiana Department of Workforce Development (IDWD)

The IDWD is the grant recipient under WIA to manage the program within the state. It administers employment programs for residents.

In 2005, IDWD had 16 Workforce Investment Boards (WIB) throughout Indiana. Each had their own case management software system. After the new IT Director was appointed, IDWD determined there was a need for a uniform software system that all 16 locations could use.

IDWD state ethics guidance for employees is the responsibility of the IDWD Deputy Commissioner/Human Resources Director.

Indiana Department of Administration (IDOA)

The IDOA is an umbrella agency that provides support services to other State agencies. The Procurement Division of IDOA facilitates the purchasing and contracting activities of all State Agencies, excluding the Indiana Department of Transportation. The IDOA Procurement Division manages all: (a) requests for information (RFI); (b) request for quotes; (c) request for proposals (RFP); and purchase agreements.

APPENDIX B

OBJECTIVES, SCOPE, METHODOLOGY, AND CRITERIA

Objective

Did IDWD's former IT Director have a conflict of interest when he participated in the award and administration of a contract with @Work Solutions, Inc.?

Scope

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We examined the alleged conflict of interest regarding the contract award to @Work Solutions, Inc. and subsequent contract administration by IDWD primarily during the period from February 2005; when the former IT Director was hired by the State, through December 2006.

We evaluated IDWD's internal controls related to preventing and detecting conflicts of interest in procurement awards and contract administration as related to this contract. Since IDOA was also involved in the procurement process for @Work Solutions, Inc., we conducted a limited review of their internal controls over this procurement process.

Our audit was conducted at IDWD, IDOA and the Indiana Ethics Commission offices in Indianapolis, Indiana and our office in Chicago, Illinois. We also visited the Indianapolis offices of @Work Solutions, Inc.

Methodology

We based our conclusions on interviews and document examinations.

We interviewed current and former employees of IDWD, including:

- Subject of the complaint (former IT Director);
- Former IT Director's supervisor, the former IDWD Commissioner;
- Current Commissioner (this person was General Counsel during the former IT Director's tenure at IDWD);
- Current and former Human Resources Directors;
- Manager for @Work Solutions, Inc. contract; and
- Four proposal evaluation committee members (others were no longer with IDWD)

We also interviewed others involving this complaint:

- Director, State Ethics Commission Board;
- IDOA Deputy Commissioner, Purchasing;
- Owners of @Work Solutions, Inc.; and
- ETA Financial Grants Management Analyst, Chicago, Region 5 (covers Indiana).

We examined IDWD procurement files regarding the @Work Solutions, Inc. contract to identify all available documentation of the process. This included documents that were developed to identify the need for the contract, criteria that went into the RFP, proposals submitted by vendors and proposal evaluation committee analysis and rating of vendors, the proposal committee recommendation to select @Work Solutions, Inc. with supporting analysis and various correspondence between IDWD and IDOA.

We also reviewed the former IT Director's emails during his tenure at IDWD, IDWD contract with @Work Solutions, Inc.; and agreement for the sale of the former IT Director's companies. Additionally, we established a time-line of events starting with the appointment of the former IT Director at IDWD to the date he was fully paid for the sale of his companies.

We identified federal and state regulatory requirements related to ethics and procurement and compared them to circumstances involved in this contract award and administration during the former IT Director's tenure at IDWD.

Criteria

We used the following criteria in performing this audit:

ETA, Title 20, CFR Subpart 667.200

Labor, Title 29, CFR Subpart 97.36

ETA One Stop Comprehensive

Financial Management Technical Assistance Guide; Chapter 11-10 Procurement
(July 2002)

Indiana Code of Ethics, 42 IAC 1

Indiana Code of Ethics for the Conduct of State Business, 40 IAC 2

APPENDIX C

ACRONYMS AND ABBREVIATIONS

CFR	-	Code of Federal Regulations
DOL	-	Department of Labor
ETA	-	Employment and Training Administration
IDOA	-	Indiana Department of Administration
IDWD	-	Indiana Department of Workforce Development
FY	-	Fiscal Year
IG	-	Inspector General
IT	-	Information Technology
OIG	-	Office of Inspector General
WIA	-	Workforce Investment Act

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APPENDIX D

AUDITEE RESPONSE TO DRAFT REPORT



INDIANA
WORKFORCE
DEVELOPMENT

November 26, 2008

To: Charles Allberry
Audit Director
Department of Labor – Office of Inspector General
230 S Dearborn, Room 744
Chicago, IL 60604

From: Teresa Voors

Dear Mr. Allberry,

Below is the Indiana Department of Workforce Development's ("IDWD") response to the draft audit report dated 10/31/08. If you have any questions, please contact Dustin Stohler at (317) 432-5779.

Response:

Given its position as a servant to the people of Indiana and a recipient of federal grants, IDWD takes allegations of conflicts of interest seriously and strives to avoid any appearance of impropriety. IDWD has terminated employees for failing to disclose such conflicts in the past. IDWD deeply regrets that its former director of IT failed to disclose his interest in a business that was awarded a contract from IDWD and IDWD will take all steps necessary to rectify this situation.

1. IDWD will provide to the OIG and the Assistant Secretary for Employment Training the documents necessary to conduct the review requested in the report. Please forward any request for documents to our General Counsel.
2. IDWD will take all reasonable steps to strengthen its internal controls to prevent and detect conflicts of interest.
 - a. IDWD has at all times relevant to the report required employees to attend mandatory ethics training. As of 2008, that training was conducted electronically to track and ensure compliance. For 2008, 100% of IDWD employees had completed the training.
 - b. IDWD will require all personnel involved in procurement actions and contract administration to disclose external financial interests and certify that they are free from conflicts of interest.

Sincerely,

Teresa Voors
Commissioner

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