

June 4, 2004

The Honorable James C. Greenwood  
Chairman  
Subcommittee on Oversight and Investigations  
Committee on Energy and Commerce  
U. S. House of Representatives  
Washington, DC

*SUBJECT: Investigation of the E-rate  
program as part of an audit of the  
Puerto Rico Department of Education*

Dear Congressman Greenwood:

In my capacity as Comptroller of the Commonwealth of Puerto Rico (Comptroller), and as requested by you, I am pleased to offer information regarding the E-rate program in the Puerto Rico Department of Education (PRDOE). This is a federal program designed to subsidize the deployment of telecommunication services to eligible schools and libraries.

Before going into the Audit Report, I will briefly describe our oversight role regarding the expenditure of public funds within the Commonwealth of Puerto Rico. This background information may help the Subcommittee understand the nature of our audits, the reports we issue and our jurisdiction.

The Honorable James C. Greenwood  
Page 2  
June 4, 2004

Article III, Section 22, of the Constitution of the Commonwealth of Puerto Rico, created the position of Comptroller in 1952. The Comptroller is appointed by the Governor with the advice and consent of the majority of the total number of members of the Puerto Rico Legislature. In my case, I was sworn in, on October 2, 1997, for a period of 10 years, which term is established also by the Constitution. The role of the Comptroller is set forth in the Constitution: *to...audit all the revenues, accounts and expenditures of the Commonwealth, of its agencies and instrumentalities and of its municipalities, in order to determine if they have been made in accordance with the law.* Because of this constitutional mandate, the audits are conducted with full independence from the three branches of government.

The findings on every audit are published by means of audit reports prepared upon completion of the investigation. Before publishing, each report is first sent to the Governor, the President of the Senate and the Speaker of the House of Representatives. In the reports, we provide recommendations to the audited entities.

Concurrently with the adoption of the Constitution of Puerto Rico, our legislature enacted Law No. 9 on July 24, 1952, which set the framework and further defined the purpose and scope of the Office of the Comptroller. Among other things, said law grants authority to the Comptroller to: (a) adopt auditing standards, (b) determine when to publish and whom to notify our reports, (c) delegate any function, except rulemaking, (d) require other agencies to comply with our requests for financial and other information necessary for a complete understanding of the matter under investigation, (e) issue

*subpoenas*, and (f) require any public official, except the Governor of Puerto Rico, to comply with a *subpoena* issued by the Office of the Comptroller.

The Office of the Comptroller treats federal funds that are assigned to subsidize local government programs as if they were, for all intent and purposes, revenues, accounts and expenditures of the Commonwealth of Puerto Rico. As such, we generally audit them as part of the audit of the local fund allocated to the government entities'. However, these audits are not done to comply with any federal government purpose or requirement. They are strictly a local initiative to ascertain the appropriate use of such funds. Nevertheless, it should be pointed out that government agencies that receive federal funds usually are required to make a commitment to the federal government to audit the use of such funds, using external auditors, as part of the qualification process to receive them. Therefore, our audit of federal funds is an additional control measure that we have voluntarily adopted.

Ours is a *post-audit* function, generally limited to compliance, not financial auditing. In other words, we audit transactions that have already occurred to make sure they have been carried out in compliance with applicable laws and regulations. Furthermore, the audit work we carry out is governed by generally accepted auditing standards adopted by the Comptroller. *Pre-audits* are beyond our jurisdiction.

Our Mission's statement conforms to the constitutional mandate: to oversee the transactions of public funds and property, with independence and objectivity, in order to ascertain that they have been carried out in accordance with the law, and to promote the effective and efficient use of government resources for the benefit of our people.

The **Vision** is to be a world-class model for public office, distinguished by: the excellence of its highly qualified human resources, dedicated to continuous improvement, a sophisticated infrastructure and optimum quality services. Included in our **Vision** is our obligation to serve Puerto Rico as a true agent of change, integrating the efforts of the public and private sectors, in order to promote the honest use of the resources entrusted to the government by the People.

We have adopted many personal and professional **Values**, which are comprehended in the followings Core Values:

Commitment	We are dedicated to our work
Integrity	We work in a responsible manner
Sensibility	We respect the dignity of all human beings
Justice	We watch for the strictest compliance with the law
Excellence	We are constantly improving ourselves

The **Mission, Vision** and **Values** define not only **what** we are as a highly regarded public institution, but also **who** we are as public servants.

Our Office is not a law-enforcement agency, nor do we have judicial or administrative adjudicating powers. Findings arising out of the audit reports are referred to the appropriate law enforcement agencies, such as the local Justice Department, the Office of Government Ethics of Puerto Rico and the Office of the Special Independent Prosecutor's Panel of Puerto Rico. Our findings can also be referred to the United States District

Attorney's Office for the District of Puerto Rico, and other federal agencies that use our findings to further their investigations, particularly if the audit reveals the improper use of federal funds.

Once an audit report is published we monitor the agency's compliance with the recommendations by means of a follow-up program called the Corrective Action Plan (CAP). This plan provides all government entities 90 days to submit an initial CAP. This period begins on the first day of the month following the publication of the audit report. Complementary reports must be submitted within 90 days from the initial report or a preceding complementary report.

I will now directly address Audit Report TI-03-09, published by our Office on April 14, 2003. This report was the result of an audit conducted by our Information Technology Audit Division on the Office of Information Systems and School Technology of PRDOE regarding the acquisition of equipment and services for the EDUNET network and the contracting and implementation of the network.

The Audit Report covers from March 24, 2000 through April 27, 2001, and focuses on five major findings. A mayor finding is defined in our report as a deviation from norms regarding the operations of the audited unit that have a material effect, either in quantitative or qualitative terms.

## **FINDINGS AND RECOMMENDATIONS**

**Finding 1 – Acquisition of equipment and services for the EDUNET network without the use of a formal bidding process and other deficiencies related to the contracts awarded**

In 1997 the PRDOE embarked on a telecommunications project called EDUNET. It consisted of a communications network between all schools and administration offices. The purpose of the project was to integrate technology with education. The project encompassed videoconferencing and Internet access. The program would involve a total of 1,540 schools.

In March 1998 PRDOE submitted a request for federal E-rate funds to begin implementation of the first phase of EDUNET. This phase consisted of establishing the infrastructures for the communications network, including internal connections and telecommunications, and providing Internet access for 760 schools. It was estimated the phase would be completed by September 30, 1999.

In October 1998 PRDOE awarded the contracts listed below to two companies at a cost of \$51,353,490 for acquiring the telecommunications equipment and contracting the Internet access services:

**CONTRACTS**

<b>NUMBER</b>	<b>DATE</b>	<b>SERVICE</b>	<b>COST</b>
1. 081-99-0161	Oct. 26 '98	Telecommunications	\$31,122,910
2. 081-99-0162	Oct. 26 '98	Transport & Internet	7,123,248
3. 081-99-0164	Oct. 15 '98	Internal Connections	<u>13,107,332</u>
			\$ 51,353,490

The first two contracts were awarded to Puerto Rico Telephone Company (PRTC) and the third to DRC Corporation. The first contract was later amended

by Contract 081-99-0161A to change the telecommunications equipment. The amendment reduced the contract's cost to \$10,863,557. The contract included recurring costs for the rent of telecommunication lines.

The second contract was also amended by Contract 081-99-0162A to change the transport services. This had the effect of increasing the costs to \$17,374,754. The contract included recurring costs for Internet access services.

As of April 27, 2001, the cutoff date of the audit, both companies had submitted invoices for \$40,059,626. Of this amount, \$35,854,964 had been paid from E-rate funds and \$3,114,638 from Commonwealth funds. Unpaid invoices totaled \$1,090,024.

Our audit revealed that:

1. Contrary to federal and Commonwealth regulations, formal bid procurement procedures were not followed to award the three contracts. PRDOE only considered the proposals submitted by the two companies that were contracted. The first two contracts were awarded to PRTC and the third one to DRC Corporation.
2. The Director of PRDOE's Budget Department certified the availability of funds to pay for the services rendered under the contracts on February 22, 1999. That is, 119 days after the contracts were awarded.
3. Contrary to established rules, there was no evidence that the contracts were approved by the Commonwealth's Office of Management and Budget, either before or after they were awarded.

In March 1999 PRDOE submitted a new request for E-rate funds to the federal government. These additional funds were considered necessary for the second phase of the EDUNET network. This phase consisted of establishing the infrastructure for the communications network, including internal connections and telecommunications, with wireless technology and providing Internet access for 780 schools. Federal funds in the amount of \$56,879,778 were approved for this second phase. PRDOE had to match that assignment with Commonwealth funds in the amount of \$6,373,499. It was estimated the phase would be completed by September 30, 2000.

On April 5, 1999, PRDOE awarded contract 081-99-0423 to DRC, in the amount of \$51,478,221 to work on the second phase. As of April 27, 2001, the cutoff date of our audit, the company had submitted invoices for \$33,849,881. Of this amount \$26,834,997 had been paid from E-rate funds and PRDOE had paid \$6,885,731 from Commonwealth funds. Unpaid invoices amounted to \$129,153.

The audit also revealed that:

1. Contrary to federal and Commonwealth regulations formal bid procurement procedures were not followed to award the contract. Instead, PRDOE requested and evaluated proposals. PRDOE named an Evaluations Committee to evaluate proposals for the E-rate funds. An examination of the request for proposals and the procedure followed by PRDOE in awarding this contract to DRC revealed, furthermore, the following irregularities:

- a. The request for proposals did not specify a final date for their submission. Neither did it specify a date for opening the same.
  - b. Of the six proposals received only two complied with the requested specifications. The director of PRDOE's Office of Information Systems and School Technology (OISST) evaluated them. There was no evidence indicating that the PRDOE's Evaluations Committee considered the proposals. OISST prepared two memos to the Secretary of Education regarding the proposals but neither contained any recommendation for awarding the contract or reasons for not considering the other five proposals.
4. The Director of OISST requested from the Director of PRDOE's Budget Office a certification on the availability of funds to pay for the services rendered under the contract on October 19, 1999. That is, 197 days after the contract was awarded.
  5. Contrary to established rules, there was no evidence the contract was approved by the Commonwealth's Office of Management and Budget, either before or after it was awarded.

#### **RECOMMENDATIONS**

Four recommendations were made on this finding. The first was directed to the Secretary of Justice of the Commonwealth requesting her to consider the finding and take any action that may be deemed appropriate (Recommendation 1). The other three recommendations were directed to PRDOE's Secretary: the first was

to comply, in the future, with the regulations on awarding contracts that require a formal bid process (Recommendation 2); the second was to make sure that they obtain, before awarding any contract, a certification from PRDOE's Budget Office on the availability of funds to pay for the services required (Recommendation 3); and the third was to make sure that they submit to the Commonwealth's Office of Management and Budget any contract regarding computer related products or services before awarding them (Recommendation 4).

**Finding 2 - Deficiencies in the implementation and the use of the telecommunications infrastructure installed for the EDUNET network**

In a physical inspection of 30 schools which took place from October 11 to November 21, 2000 (18 schools corresponding to the first phase, whose work was supposed to have been completed by September 30, 1999, and 12 schools corresponding to the second phase, whose work was supposed to have been completed by September 30, 2000) we discovered various deficiencies in the implementation of the EDUNET network as follows:

- a. The telecommunications infrastructure network installed in the schools was not used.
- b. PRDOE had not acquired the computers for the students.
- c. The teachers had limited knowledge on computer use.
- d. Physical and electrical conditions in the schools didn't have the capacity required for using the communication and computer equipment, as follows:

1. Fifteen schools (50%) lacked adequate electrical installations to connect the computers that were to be bought for the students.
2. Twelve of the schools (40%) lacked bars to protect the communication equipment installed.
3. Eleven of the schools (37%) didn't have their communication equipment cabinets under lock and key.
4. Four of the schools (13%) didn't have adequate locks in the doors of the rooms where the communication equipment was installed.
5. Two of the schools (7%) had broken connection ports.
6. One of the schools (3%) maintained open the security covers on the antennas.
7. One of the schools under reconstruction maintained the antennas exposed to water and dust.
8. The person in charge of maintenance in one of the schools had to patch some holes in a wall because the contractors omitted to do it.
9. One of the schools maintained two connection boxes without covers and with the cables exposed.
10. One of the schools had the communication cable tubing broken and separated from the wall.

In our opinion poor planning and the absence of adequate continuous supervision of the work done by the contractors caused these deficiencies. Because of our findings, up to April 27, 2001, we believe PRDOE did not obtain any benefit from

the investment of \$73,614,511 in internal connections and telecommunications, and \$294,996 in services from lines connected to the Internet of the EDUNET network that correspond to the amounts billed by the contractors.

## **RECOMMENDATIONS**

On this second finding we made two recommendations. The first, once again, directed to the Secretary of Justice of the Commonwealth requesting her to consider the finding and take any action that may be deemed appropriate (Recommendation 1). The other to PRDOE's Secretary requesting that for any project similar to the one discussed in this second finding the following have to be done: before acquiring computer related equipment and awarding contracts for such services, make a study to determine what else is necessary (Recommendation 5.a.); an efficient working plan must be established to improve the infrastructure of all the schools and to complete the implementation of the EDUNET network (Recommendation 5.b.); and PRDOE must supervise all contractors adequately in order to attain the project's objectives (Recommendation 5. c.).

**Finding 3 – The improper use of funds from a federal program for expenses incurred by the Department [of Education] on the EDUNET network, and the absence of participation of the Office of External Resources [of the Department] in the evaluation and assignment of funds for said project**

On December 15, 1998 and August 25 1999 PRDOE awarded to a company contracts amounting to \$142,850. These were contracts 081-99-0286 (\$44,850)

and ORE-081-00-070 (\$98,000). The contracted services consisted of assessing the work done by PRTC and DRC in the implementation of the EDUNET network. Part of the money that was earmarked to pay for the services rendered, amounting to \$92,850 came from another federal program known as Title III Funds and \$50,000 from the Goals 2000 Program, which were granted by the federal government for other educational purposes not compatible with this contract.

As of April 10, 2001 PRDOE had improperly paid \$44,850 using Title III Funds for costs related to the first contract for work done between May and September 1999.

The process of assessing and assigning funds to pay for the contracts was done in an irregular manner. PRDOE's Director of the Office of External Resources approved the use of said federal funds without first determining if the contracts complied with the conditions of the federal programs that supplied the funds.

### **RECOMMENDATIONS**

On the third finding we made three recommendations. The first, once again, was directed to the Secretary of Justice of the Commonwealth requesting her to consider the finding and take any action that may be deemed appropriate (Recommendation 1). The other two were directed to PRDOE's Secretary requesting that he take steps to ensure that Title III Funds are only used for the purposes for which they were authorized by law (Recommendation 6), to make sure all proposals for using federal funds be processed in PRDOE's Office of

Federal Affairs and that the transactions involved comply with all applicable laws and regulations (Recommendation 7).

**Finding 4 – Absence of important clauses and certifications by the contractors in the contracts for services related to the EDUNET network**

An evaluation of contracts 081-99-0161, 081-99-0162, 081-99-0164, and 081-99-0423 and their respective amendments revealed the following mistakes:

1. Omission of important clauses and information that would have protected the best interests of PRDOE:
  - a. Regarding conflicts of interest by the contracting companies' personnel.
  - b. A stipulation to the effect that any changes in the services provided had to be approved by PRDOE.
  - c. A stipulation to the effect that subcontractors had to be approved by PRDOE.
  - d. On contract 081-99-0423 the account from which the services rendered would be paid was not identified.
  - e. Contracts 081-99-0164 and 081-99-0423 did not include the employers' social security number and the incorporation registration number.
  - f. Contract 081-99-0164 did not include an enclosure with a list of the schools, which would be receiving services under the contract.

The auditors obtained the list from PRDOE's Request of Funds Form prepared on March 11, 1998.

- g. In the amendments to the contracts (Nos. 081-99-0161A and 081-99-0162A), the exhibits were not included as part of the contracts. They were also not available for examination.
2. Contracts 081-99-0164 and 081-99-0423 did not contain clauses requiring the contractors to supply certain documents required by Commonwealth regulations. The following documents were not included in the contract files, nor were they available for examination:
  - a. Tax Debt Certifications and Income Tax Return Filing Certifications from the Commonwealth Treasury Department
  - b. Personal and Real Estate Property Debt Certifications
  - c. Unemployment, disability and social security for drivers (as applicable) Debt Certifications

## **RECOMMENDATIONS**

On this fourth finding we made three recommendations. The first one once again directed to the Secretary of Justice of the Commonwealth requesting her to consider the finding and take any actions that might be deemed appropriate (Recommendation 1). The other two were directed to PRDOE's Secretary requesting that he take steps to ensure that all contracts contain the appropriate clauses to protect the interests of PRDOE (Recommendation 8) and to make sure

the contractors provide the certifications required by laws or regulations (Recommendation 9).

**Finding 5 – Absence of registration or late registration of the contracts related to the EDUNET network in the Office of the Comptroller of Puerto Rico**

According to Commonwealth Law No. 18, approved on October 30, 1975, as amended, all government entities must maintain a register of all the contracts they award, and their amendments. Additionally, they must submit a copy of the contracts and amendments to the Office of the Comptroller within 15 days after the contracts are signed.

As of March 12, 2001, PRDOE had not submitted contracts 081-99-0161, 081-99-0162, and 081-99-0423, awarded in October 1998 and August 1999, or their respective amendments in the amount of \$76,149,672.

There were also other contracts, identified in the Audit Report that were submitted late to our Office. The tardiness fluctuated between 175 and 397 days.

**RECOMMENDATIONS**

On this fifth finding we made two recommendations. The first one once again directed to the Secretary of Justice of the Commonwealth requesting her to consider the finding and take any actions that may be deemed appropriate (Recommendation 1) and the second to PRDOE's Secretary requesting compliance with Law No. 18 (Recommendation 10).

As of the date of this letter, according to our evaluation of the CAP, and a complementary report submitted by PRDOE, the status of the nine audit recommendations directed at them is as follows:

1. Recommendation 2, regarding PRDOE's compliance with regulations on awarding contracts that require a formal bid process, is considered as having been complied with. PRDOE has informed us that formal bidding procedures are being followed.
2. Recommendation 3, regarding obtaining a certification from PRDOE's Budget Office on the availability of funds to pay for the services required before awarding any contract, is considered as having been complied with. PRDOE has informed us that they are obtaining the certifications at the appropriate time.
3. Recommendation 4, regarding submission for approval to the Commonwealth's Office of Management and Budget any contract regarding computer related products or services before awarding the same, will be followed-up on our next audit of PRDOE.
4. Recommendation 5.a, regarding that a study must be made to determine what is necessary before acquiring computer related equipment and awarding contracts for such services similar to those discussed in Finding 2, will be followed-up on our next audit of PRDOE.
5. Recommendation 5.b, regarding that in any project similar to the one discussed in Finding 2, an efficient working plan must be established to improve the infrastructure of all the schools and to complete the implementation of the

EDUNET network, is considered partially completed. PRDOE was asked to submit a working plan contemplating the status of every school and the completion date for the EDUNET network by school. PRDOE has indicated that they plan to have the EDUNET operating by December 2004.

6. Recommendation 5.c, regarding that in any project similar to the one discussed in Finding 2, PRDOE must supervise all contractors adequately in order to attain the project's objectives, is considered as having been complied with. PRDOE has informed us that the projects are being supervised adequately.
7. Recommendation 6, regarding using Title III federal funds only for the purposes for which they were authorized by law, will be followed-up on our next audit of PRDOE.
8. Recommendation 7, regarding processing in PRDOE's Office of Federal Affairs all proposals requesting federal funds and that the transactions involved comply with all applicable laws and regulations, is considered as complied with. PRDOE has informed us that the required processing is being done.
9. Recommendation 8, regarding the inclusion in all contracts of the appropriate clauses to protect the interests of PRDOE, is considered as complied with. PRDOE has informed us that the appropriate clauses are being included.
10. Recommendation 9, regarding contractors providing all the certifications required by laws or regulations, is considered as having been complied with. PRDOE has informed us the certifications are being supplied.

11. Recommendation 10, regarding compliance with Law 18 which requires copies of all contracts to be filed in the Office of the Comptroller, is considered as having been complied with. PRDOE has informed us they are in compliance with said law.

As of today, the recommendations made to the Secretary of Justice of the Commonwealth regarding each of the five findings are under advisement by said Secretary.

As a normal working procedure we have accepted PRDOE's allegations of compliance with our recommendations based on the allegations they have included in their CAP. In the next audit of the unit we will verify said compliance.

The proper use of Commonwealth and federal funds, especially in PRDOE programs that are directly related to the proper education of children, is matter of serious and vital concern to our Office. Mr. Chairman and all the other members of this Committee, I thank you for your interest in this critical issue. If you, or your staff, have any questions regarding this presentation, please call me at (787) 250-3300 or call Mr. Alfonso M. Christian, Esq., Assistant Comptroller, at (787) 250-3305, or Mrs. Lourdes Díaz at (787) 294-0286.

Respectfully submitted,

Manuel Díaz Saldaña  
Comptroller  
Commonwealth of Puerto Rico