



**Office of Inspector General**  
Legal Services Corporation

Inspector General  
Jeffrey E. Schanz

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February 11, 2014

Mark Diak, CPA  
Diak & Diak, P.C.  
802 Bauer Street  
Maryville, IL 62062

Re: Decision of the Inspector General on Debarment Appeal of Mark Diak, CPA

Dear Mr. Diak:

After careful consideration of your appeal I have decided to affirm the decision of the debarring official. The reasons for my decision are set out below.

Background

The Legal Services Corporation's (LSC) 1996 Appropriations Act, Public Law 104-134, and subsequent appropriations acts charge the LSC Office of Inspector General (OIG) with overseeing the process by which Independent Public Accountants (IPAs) conduct statutorily mandated annual audits of LSC's grantees. The LSC OIG is authorized by these acts to debar, suspend, or remove IPAs who fail to comply with "government auditing standards and guidance established by the [OIG]." Public Law 104-134, § 509(d). LSC has enacted regulations defining the circumstances under which the OIG may debar an IPA. Specifically, debarment is appropriate where, among other grounds, the IPA has

failed significantly to comply with government auditing standards established by the Comptroller General of the United States, generally accepted auditing standards and/or OIG audit guidance as stated in the OIG Audit Guide for Recipients and Auditors, including the Compliance Supplement for Audits of LSC Recipients, and in OIG Audit Bulletins.

In its November, 2012, Quality Control Report, McBride, Lock & Associates (McBride) found that "there was no evidential matter included in the information provided to support" your FY 2011 audit reports for Land of Lincoln Legal Assistance Foundation, Inc. (Land of Lincoln). See McBride QCR, at 2.

Accordingly, on February 25, 2013, the OIG issued a Notice of Proposed Debarment (NPD) requesting your response to McBride’s finding that your FY 2011 Land of Lincoln audit violated:

- (a) Generally Accepted Government Auditing Standards (GAGAS) 4.03(c), which requires auditors to obtain “appropriate audit evidence to provide a reasonable basis for an opinion ...”;
- (b) GAGAS 4.19, which requires documentation sufficient to “enable an experienced auditor ... to understand” how the audit was performed, what evidence was obtained, the conclusions reached, and that audited information is consistent with accounting records; and
- (c) GAGAS 4.01 which expressly incorporates American Institute of Certified Public Accountants (AICPA) field work and reporting standards. The audit work in question is inconsistent with many of the requirements set forth in AICPA SAS 103 (Audit Documentation).

In addition, the NPD noted that:

- (a) as indicated in McBride’s QCR report, there was insufficient evidential matter to support the conclusions expressed in your audit report on supplemental information for Land of Lincoln for the year ending December 31, 2011. “As such, the audit in question violates GAGAS 4.03(c), 4.19, and 4.01, which incorporates AICPA SAS 103.” NPD, at 2.
- (b) as indicated in the QCR report prepared by McBride, there was insufficient evidence to support the conclusions expressed in your audit report on compliance and internal controls for Land of Lincoln for the year ending December 31, 2011. “As such, the audit in question violates GAGAS 4.03(c), 4.19, and 4.01, which incorporates AICPA SAS 103.” NPD, at 3.
- (c) McBride’s work papers indicate there was “little if any documentation concerning testing that would accomplish the objective of providing ‘reasonable assurance [that the] ... LSC recipient complied with the LSC Act, regulations, and other applicable law.’” LSC OIG, *Compliance Supplement for Audits of LAC Recipients*, Part C at 8. The NPD noted that “the one document that appears related to compliance audit work evidences neither use of the procedures suggested in the *Compliance Supplement* nor adequate ‘alternative procedures used to accomplish the objective’ of the compliance portion of the audit.” NPD, at 3, quoting *Compliance Supplement*, Introduction at 2.

As provided for in LSCs debarment regulations, the NPD informed you of your right to respond, within 30 days, to the proposed debarment. See NPD, at 3, citing 45 C.F.R. § 1641.9. Also in

accordance with the regulations, the NPD specified that your response should be in writing; that it should include “specific information and argument” in response to the proposed debarment; and that it may also include a request for a meeting with the debarring official to “discuss issues of fact or law” relating to the proposed debarment. NPD, at 3, quoting 45 C.F.R. § 1641.9(c).

You submitted approximately 932 pages of documentation within the 30-day response period. See Notice of Debarment, at 2. These submissions did not provide the requisite evidential support for the conclusions you reached in your FY 2011 Land of Lincoln audit. See id.

You also requested an informal conference; this took place via telephone on April 26, 2013. See id. During the conference you contended the McBride auditors did not give you sufficient opportunity to present supporting documents or explain your system of audit documentation. See id., at 3. Accordingly, the OIG provided you another opportunity to submit evidence supporting the conclusions you reached in the FY 2011 Land of Lincoln audit, inviting you to submit additional documents. See id.

During the following weeks you submitted approximately 338 pages of additional material. See id. Out of an abundance of caution the OIG then decided to contract with another firm (Sikich, LLP) to analyze McBride’s QCR and determine whether McBride’s findings were valid. See id.

In September, 2013, a Sikich auditor interviewed you in person and reviewed the documentation you maintained in connection with the FY 2011 Land of Lincoln audit. See id., at 4. A week later Sikich conducted a telephone conference with you “to address any questions not resolved by . . . the audit documentation.” Id., quoting Sikich Report, at 2. Following the in-person interview and telephone conference, you provided Sikich with an additional 238 pages of documentation purportedly relevant to Sikich’s review. See id. In total, you provided the Sikich reviewers “a collection of documents over a period of 20-25 years” comprising “38+ binders and an equivalent number of boxes as support for the audit report.” Id., at 3.

Upon completion of its review Sikich concurred with McBride’s findings that the information you provided “lacked the form, content, client specific assessment, and completeness as required by generally accepted auditing standards.” Sikich Report, at 3. According to Sikich, the information you presented did not “provide sufficient evidential matter to support and express the following:

- The independent auditor’s report on financial statements
- The independent auditor’s report on supplemental information
- The independent auditor’s report on the schedule of expenditures of Federal awards
- Report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with Government Auditing Standards
- Independent auditor’s report on compliance with requirements that could have a direct and material effect on each major program and on internal control over compliance in accordance with OMB Circular A-133.”

Id.

Accordingly, Sikich “concur[red] with the Quality Control Review report issued by McBride, Lock & Associates . . . that indicated documentation presented was not sufficient for the expression of an opinion in accordance with Generally Accepted Auditing Standards and the issuance of the above mentioned reports.” Id.

In its report Sikich further noted that your firm (Diak & Diak, P.C.) had received a rating of “fail” in its January, 2011, peer review report. See id. According to Sikich, the report indicated that the quality control system for your firm’s audit and accounting practice was not suitably “designed or complied with to provide the firm with reasonable assurance of performing and/or reporting in conformity with applicable professional standards in all material respects.” Id., quoting 1/11/11 Peer Review by John F. Georger, Jr., CPA.

On November 14, 2013, the LSC OIG’s debarment official issued her decision, finding by a preponderance of the evidence that you should be debarred, as your audit of Land of Lincoln for the period ending December 31, 2011, “failed significantly to comply with government auditing standards . . . generally accepted auditing standards [and] OIG audit guidance. . . .” 11/14/13 Decision, at 1, quoting 45 C.F.R. § 1641.7.

#### Analysis and Decision

In your appeal you have offered no sustained argument or reasoning to show that the debarment order was legally deficient; nor have you provided information demonstrating that the order was based on a factual error or misunderstanding. You have not shown the debarment was unwarranted whether the matter is considered under a de novo or an abuse of discretion standard.

As you have submitted several hundred pages of documents on appeal, I will discuss only a representative sample.

First, you have presented, without explanation, numerous copies of documents such as LSC’s Accounting Guide for LSC Recipients, the LSC OIG’s Compliance Supplement, and other audit-related documents, annotated with handwritten check marks and commentary. For example, you included a copy of the Compliance Supplement’s “Suggested Audit Procedures” for 45 C.F.R. §§ 1608-42, with the notations “Yes done & OK” handwritten in the margins next to each of the regulatory provisions. At the bottom of each page is your handwritten notation: “results as expected – NO mt’l items per Diak CPA 2012”. Presumably you have submitted these types of materials in an attempt to show documentary support for the conclusions you reached in your FY 2011 audit of Land of Lincoln. McBride and Sikich concluded that such documentation was insufficient to form the basis of an audit opinion under Generally Accepted Government Auditing Standards; you have presented nothing on appeal to throw the two firms’ conclusions into doubt.

Similarly, you have presented a number of closed case files from Land of Lincoln; presumably these are meant to show that you in fact looked at client files. But you have offered nothing to show when you examined the files; what significance the files have in the context of your

auditing work; or how the mere existence of the files (or your possession of them) supports your contention that you should not be debarred from auditing LSC recipients.

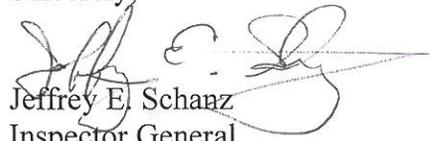
In addition, you have submitted a copy of a portion of LSC's Audit and Accounting Guide with check marks next to a list of documents to be provided to an LSC recipient's auditor, and a notation on the front page stating: "OK done per Mark Diak CPA." This document might reasonably be taken to indicate that you did, in fact, receive the requisite documents from Land of Lincoln. But there is no indication here when the documents were produced, or what use you made of them when conducting the FY 2011 Land of Lincoln audit.

In your appeal, you have offered no compelling arguments refuting McBride's and Sikich's conclusions that you failed to comply with GAGAS and other applicable standards in your FY 2011 Land of Lincoln audit. Moreover, there is nothing in the documents you have submitted on appeal to show that you followed the applicable guidelines and procedures while conducting the FY 2011 audit at Land of Lincoln. Nor have you offered any reasoning to support your apparent contention that an auditor's age or length of tenure should excuse him from the obligation to comply with GAGAS when performing LSC recipient audits.

Conclusion

For the foregoing reasons, I have decided to affirm the decision of the debarring official.

Sincerely,

  
Jeffrey E. Schanz  
Inspector General

Cc: Lois Wood, Executive Director  
Land of Lincoln Legal Assistance Foundation