

**Virgin Islands Department of Health – Special Conditions for
FFY 2007 IDEA Part C Grant
Enclosure B**

I. Basis for Requiring Special Conditions

Pursuant to 34 CFR §80.12, the U.S. Department of Education (Department) through the Office of Special Education Programs (OSEP) is imposing Special Conditions on the Virgin Islands Department of Health (VIDH) for its Federal Fiscal Year (FFY) 2007 grant award under Part C of the Individuals with Disabilities Education Act (Part C or Part C of IDEA).

These Special Conditions are imposed to ensure the maintenance of VIDH's vendor payment and financial recordkeeping responsibilities through VIDH's use of a third party agent, Lutheran Social Services (LSS), to ensure prompt payment of vendors that provide Part C services to infants and toddlers with disabilities and their families in the Virgin Islands. These Special Conditions are imposed because the Virgin Islands (VI) Government and VIDH have not demonstrated that they have instituted procedures for ensuring that vendors who provide Part C services can be paid in a timely manner (to ensure uninterrupted provision of early intervention services to infants and toddlers with disabilities and their families) without using a third party financial management contractor.

Although these Special Conditions are attached to VIDH's FFY 2007 Part C grant award, the Department recognizes the importance of VIDH's coordination with, and cooperation from, the VI Office of Management and Budget, the VI Office of Personnel, the VI Office of Finance, and any third party agent under contract with the VI Government¹ so that VIDH can continue to timely provide early intervention services to infants and toddlers with disabilities and their families as required under Part C of IDEA.

II. Nature of the Special Conditions

A. Contract to Ensure Timely Liquidations and Disbursements

1. Requirement to Maintain Contract/Approval Before Modification. By accepting its FFY 2007 Part C grant, VIDH must continue to contract with the financial management contractor, LSS with contract terms originally approved by the Department July 31, 2002. If VIDH wishes to amend its contract with LSS, VIDH must submit a written request and a new contract may not be implemented by VIDH until the Department has provided its prior written approval.
2. Contract Provisions. The contract must include the following provisions.
 - a. The contractor's role is limited to processing payments and disbursements and maintaining financial records and reporting as required under the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76 and 80. VIDH, and not the contractor, is responsible for approving the reasonableness and necessity of any proposed payments and for any recruiting, hiring, evaluating, licensing, and Part C general supervision responsibilities, including monitoring of Part C vendors or providers of goods and services for the Part C program.
 - b. During the duration of the contract, the contractor must maintain adequate liability insurance to cover all potential liability and loss from misfeasance

¹ Enclosure C requires the VI Government to obtain a separate third party agent (not LSS) for its fiscal management responsibilities due to other fiscal management problems of the VI Government not specific to VIDH.

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and/or malfeasance by the contractor and/or its employees. Such insurance must be consistent with the requirements of Virgin Islands law.

- c. At the beginning of the contract period and prior to any liquidations by VIDH from the Department of FFY 2007 Part C funds or disbursements by the contractor, VIDH must provide the contractor with a line item budget for the total amount of the Part C grant, to be used by the contractor to track projected and actual expenditures for the Part C program.
- d. Prior to any liquidations or disbursements, the contractor must establish, maintain and utilize a separate bank account for Part C program funds. Any and all Part C funds that VIDH liquidates must be deposited directly into this account. The contractor will be responsible for disbursing any and all Part C funds from that account pursuant to approved payment requests submitted by VIDH. Any interest earned by, or unclaimed funds remaining in such account must be returned to the Department at least quarterly (see 34 CFR §80.21(i)).

However, as long as VIDH continues to expend funds within three business days from the time that VIDH liquidates the funds from the Department (i.e., the funds are obligated and liquidated by VIDH), the Department will not require that an interest-bearing bank account be maintained. Any interest liability for delayed payments for expenditures by VIDH shall be determined under EDGAR Part 80 and the Cash Management Improvement Act.

- e. Prior to any liquidations or disbursements, VIDH and the contractor must follow established procedures and timelines for prompt and timely liquidations by VIDH and disbursements by the contractor consistent with Federal requirements that disbursements occur within 3 business days of draw downs and the requirements below.
- f. VIDH will continue to present approved requests to the contractor for processing and payment no later than 14 business days from the date of the receipt of a notice of an account payable that is an allowable expense under Part C, or earlier if needed to ensure timely payment to one or more Part C vendors or providers.
- g. VIDH and the contractor will continue to coordinate the timing of liquidations and disbursements to ensure that payments to Part C staff, vendors and providers are prompt and timely. VIDH will draw down sufficient Part C funds to cover each approved request for payment into the separate account;
- h. Disbursements must occur no later than 28 business days from the date of the receipt of an account payable that is an allowable expense under Part C, which includes the above-referenced 14 business days for VIDH to present requests for payment to the contractor and 14 business days for VIDH and the contractor to coordinate draw downs and disburse funds, or earlier than 28 business days if needed to ensure timely payment to one or more vendors or providers;

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- i. All transactions under the contract are consistent with all applicable Federal grant management requirements, including Office of Management and Budget (OMB) Circular A-87 and EDGAR at 34 CFR Parts 76 and 80;
- j. The contractor will continue to maintain financial records in accordance with Federal requirements and produce quarterly reports for VIDH detailing: a) the date of its receipt of, and the amount of, each approved payment request; b) the date and amount of each liquidation deposit; c) the date and amount of each payment or disbursement by the contractor; and d) any interest or other funds remaining in the account at the end of the quarter. These amounts must also be grouped by and comparable with the projections in the line item budget listed above; and
- k. Any other such terms, consistent with items a-j above, as the parties believe are necessary to ensure timely drawdowns and payments to staff, providers and vendors under the Part C program.

B. Financial Reports

VIDH must provide two reports on February 1, 2008 and June 2, 2008 detailing:

- 1) The total number of disbursements made through the reporting date;
- 2) For all disbursements included in number 1, the number of business days between the receipt of each account payable and the date of disbursement to the vendor for that account;
- 3) The average number of business days for all disbursements during the reporting period (the total number of business days listed in number 2 divided by the total number of disbursements listed in number 1);
- 4) An analysis of the causes for, and plan to reduce the number of, any disbursements made more than 30 business days after receipt of an account payable; and
- 5) The amount of any interest or other funds remaining in the Part C account at the end of the reporting period (grouped by, and comparable to, the projections in the line item budget for the Part C program).

III. Evidence Necessary for Conditions To Be Removed

The Department will remove the Special Conditions during FFY 2007 if VIDH provides documentation, satisfactory to the Department, that it has in place its own procedures to ensure timely payment of Part C vendors and providers as set forth above.

IV. Method of Requesting Reconsideration

VIDH can write to Patricia J. Guard, Acting Director, OSFP, if it wishes the Department to reconsider any aspect of these FFY 2007 Part C Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the Virgin Islands and the reasons for those requested changes.

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V. Submission of Reports

VIDH must submit all reports required under the Special Conditions. These reports should be submitted to:

Sheryl Parkhurst
U.S. Department of Education
Office of Special Education and Rehabilitative Services
550 12th Street, S.W., Room 4168
Washington, D.C. 20202

or by e-mail to:
Sheryl.Parkhurst@ed.gov

Enclosure C



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

June 26, 2007

The Honorable John de Jongh, Governor
Office of the Governor
No. 21 Kongens Gade
Charlotte Amalie
St. Thomas, Virgin Islands 00802

Dear Governor de Jongh,

The purpose of this letter is to convey to you the enclosed special conditions, which will apply to grants awarded by the U.S. Department of Education (Department) to the Virgin Islands and/or its agencies on or after the date of this letter. These special conditions will also be applicable to grant funds previously awarded by the Department to the Virgin Islands that are still available for obligation or liquidation as of the date of these special conditions. The intent of these special conditions is to ensure that Federal funding continues and is used effectively. Our specific focus continues to be on the Virgin Islands' use of a third party fiduciary agent that will perform the financial management duties as required under 34 C.F.R. Parts 75, 76, and 80 for all Department of Education (Department) grant awards. The use of a third party agent is necessary because the Virgin Islands failed to implement a credible central financial management system (FMS) as was originally required under the Compliance Agreement with the Department that ended on September 23, 2005. We acknowledge that on August 25, 2006, the Virgin Islands entered into a contract with Alvarez & Marsal to serve as the third party fiduciary agent, and that Alvarez & Marsal has since been working with the Virgin Islands, under the terms of the contract, to improve the financial management of Department grants awarded to the Virgin Islands. We view this as a positive step in the Virgin Islands' process of moving toward compliance with Federal grant requirements and fiscal accountability in the administration of Federal grant funds.

The special conditions describe the responsibility of the Virgin Islands to work with the third party fiduciary agent, as well as the role and responsibilities of the agent in administering Department grant funds. In particular, these fiscal special conditions explain that the failure of the Virgin Islands and/or its agencies to comply with any of the special conditions – including working cooperatively and in a timely manner with the third party fiduciary agent to implement the activities described in these special conditions, and notifying the Department if a dispute arises between the agent and the Virgin Islands and/or its agencies concerning implementation of the contract or the administration of grant funds – will negatively impact the ability of the Virgin Islands and/or its agencies to continue to receive Department grants. As noted under Section II.H, these fiscal special conditions must be incorporated as an addendum to the contract signed on August 25, 2006 between the Virgin Islands and Alvarez & Marsal before the Virgin Islands

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may expend Department grant funds under the grant awards to which these conditions will be attached.

Please be aware that, in addition to the attached fiscal special conditions, the Department may impose additional programmatic special conditions under individual grant programs. Moreover, the Department is prepared to take further steps, beyond the attached special conditions and any additional programmatic special conditions, to address any problems of programmatic noncompliance, as necessary.

As we have previously indicated, this approach is a valuable solution, as it enables us to provide funds to the Virgin Islands, while the Virgin Islands continues its efforts to develop and implement a credible central FMS and to make other system improvements previously required by, but not adequately implemented under, the Compliance Agreement. The result we continue to seek is that, with the assistance of a third party fiduciary agent, the Virgin Islands will be able to regain fiscal management responsibilities for, and effectively manage, Department grant programs in the future. If you have any questions, please contact Phil Maestri at (202) 205-3511.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Hudson La Force III". The signature is stylized and written in a cursive-like font.

Hudson La Force III
Senior Counselor to the Secretary

Enclosures

cc:

Dr. Lauren Larsen, Acting Commissioner, Department of Education
Ms. Debra Gottlieb, Director, Office of Management and Budget
Ms. Claudette Watson-Anderson, Commissioner, Department of Finance
Ms. Lynn Millin, Commissioner, Department of Property and Procurement