



September 28, 2011

Honorable Gene L. Dodaro
Comptroller General
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Honorable Ellen Murray
Assistant Secretary for Financial Resources
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Honorable Marilyn J. Keefe, MPH
Deputy Assistant Secretary for Population Affairs
Office of Population Affairs
Office of the Assistant Secretary for Health
U.S. Department of Health and Human Services
Tower Building, 1101 Wootton Parkway, Suite 700
Rockville, MD 20852

Re: Protest of Replacement Grant for Title X Family Planning Services in
Areas of New Hampshire, PA-FPH-11-016, CFDA Number: 93.217

Dear General Dodaro, Secretary Murray and Secretary Keefe:

As you know, the Executive Council of the State of New Hampshire (herein the "Executive Council") has the authority and responsibility, together with the Governor of New Hampshire, for the administration of the affairs of the State of New Hampshire as defined in the New Hampshire constitution, New Hampshire statutes, and advisory opinions of the New Hampshire Supreme Court and the New Hampshire Attorney General. One of these responsibilities is to approve both the receipt of and the expenditure by all state departments and Agencies of state and federal funds and to approve contracts with a value of \$10,000 or more.

In the proper exercise of its authority and responsibility and subsequent to a January 22, 2011 Notice of Grant Award issued by the U.S. Department of Health and Human Services (herein "HHS") in response to a New Hampshire Department of Health and Human Services (herein "NHDHHS") application for Title X Family Planning Services for the period following July 2, 2011, on June 22, 2011, the Executive Council voted 3-2 not to provide \$1.8 million in funds from this January 22, 2011 grant award to Planned Parenthood of Northern New England (herein "PPNNE").

Subsequent to the Executive Council June 22, 2011 decision, New Hampshire Commissioner of Health and Human Services Nicholas A. Toumpas advised the members of the Executive Council and others that HHS had informed him that the family planning services relating to the \$1.8 million not provided by the Executive Council to PPNNE had been "relinquished" by NHDHHS to HHS and that such services would, at least for 2012, be covered by providers which were to be selected pursuant to a competitive bid process. *See* attached Exhibit G. Of course, full and open competition for such services was anticipated by the Executive Council as it is as required by federal law and regulations, including, without limitation, HHS's guidelines for grants for family planning services where, as here, there is no identified emergency or urgency and other providers in the potentially affected areas existed.

Nevertheless, thereafter, without any formal announcement or effort to secure competitive offers for family planning services in any parts of New Hampshire as HHS had led Commissioner Toumpas to believe would occur, on about September 13, 2011, HHS, contending the funds had been relinquished by NHDHHS, announced a "Replacement Grant for Title X Family Planning Services in Parts of New Hampshire" (herein the "Grant") of approximately \$1.1 million. According to the Grant, the U.S. Department of Health and Human Services, Office of Population Affairs, Office of the Assistant Secretary for Health would "be awarding a non-competitive, urgent replacement grant to Planned Parenthood of Northern New England." *See* attached Exhibit A.

It is unclear from the limited documents Protestors have been able to secure at this time whether this Grant has, in fact, been awarded by HHS to PPNNE. However, according to Exhibit A the amount of the HHS Grant was to be \$1,016,866 -- \$359,765 for FY 2011 funds and an estimated \$657,101 in FY 2012 funds. In addition and according to attached Exhibit B, "[n]o applications . . . [were] accepted under this announcement: this . . . [was] a Sole Source award only." This action entirely undermined the Executive Council's authority regarding the approval of both the receipt of and the expenditure by all state departments and agencies of state and federal funds. Moreover, it eliminated the Executive Council's ability to retain a level of accountability and oversight over the funds directly awarded by HHS to and subsequently expended by PPNNE.

Quite clearly, the September 13, 2011 HHS announcement of the Grant directly contravenes the authority of the Executive Council and supersedes a proper and legal decision of the sovereign State of New Hampshire.

As the three members of the Executive Council, *i.e.*, the Honorable David Wheeler, the Honorable Raymond Wieczorek, and the Honorable Daniel St. Hilaire (collectively, herein, "Protestors") who comprised the majority of the Executive Council that determined during public sessions on June 22, 2011 not to provide \$1.8 million to PPNNE, Protestors are aggrieved parties and have standing to bring this protest.

Protestors therefore formally protest the HHS "Replacement Grant for Title X Family Planning Services in Parts of New Hampshire." For the reasons set forth herein, the HHS award of the Grant was improper, irregular, unnecessary, in contravention of the authority of the Executive Council and its duly elected members, and in absolute disregard of the sovereignty of the State of New Hampshire.

In addition and insomuch as there was, in fact, no emergency or urgency in relation to the need for the services in the allegedly affected New Hampshire areas, HHS' award of the Grant was improper as a consequence of which Protestors request that HHS declare the Grant void. See *Brackett Aircraft Radio*, B-244831, Dec. 27, 1991, 91-2 CPD para. 585.

Through counsel, Protestors have made several requests of HHS, telephonically and in writing, for documentation relating to the Grant and its award. See, *e.g.*, enclosed Exhibits D and E. For the most part, HHS has treated these requests as formal Freedom of Information Act requests and has therefore, as of the date of the filing of this protest, not provided most of the requested documents, including, without limitation, the original funding opportunity announcement, any justification and analysis relating to the award of the Grant, and other relevant documents which would assist Protestors in framing this Protest.

As a consequence, Protestors are unsure of whether or not this Protest should be filed with the Government Accountability Office (herein "GAO") and/or HHS. Thus, Protestors do so file this protest to protect any rights they may have in this regard.

As the Grant Summary Exhibit A reflects, on June 22, 2011, the New Hampshire Executive Council declined to approve, as a portion of a Title X Family Planning Services Grant made by HHS on January 22, 2011 to NHDHHS, a \$1.8 million award to PPNNE. This June 22, 2011 decision of the Executive Council was, as is required by New Hampshire law, reached and announced in public sessions with the press present.

In stark contrast to HHS's unannounced process leading up to its September 13, 2011 sole source award to PPNNE, all aspects of the Executive Council's decision were and are matters of public record and were and are well-known to HHS. Nevertheless, should HHS require additional information of the Executive Council, please do not

hesitate to communicate any such request to our undersigned counsel. All reasonable efforts will be made to promptly provide any requested information.

In brief summary, the Executive Council's June 22, 2011 decision not to fund PPNNE was based on a number of facts, circumstances, and considerations, including the following:

- PPNNE, as a function of its integrated operations in New Hampshire, performs abortions. The Executive Council determined that an award of Title X monies to PPNNE would have the effect of subsidizing, at least indirectly, PPNNE's abortion operations – a result unacceptable to the Executive Council.
- In this regard, Executive Councilor David Wheeler and Executive Councilor Raymond Wieczorek expressed great concern about and opposition to current Title X regulations which essentially require grant fund recipients to refer patients to abortion providers. Councilors Wheeler and Wieczorek believe this practice, condoned by the Obama Administration, violates the letter and spirit of § 1008 of Title X and is contrary to the values of the citizens of New Hampshire.
- Unlike other New Hampshire-based family planning services providers considered by the Executive Council, PPNNE, a Vermont corporation, and its affiliate Planned Parenthood Federation of America, Inc. have recorded large surpluses (*i.e.*, profits) of, for example, \$21,773,569.00 in 2009 and \$5,626,756.00 in 2010.¹ In fact, according to information obtained by Protestors, PPNNE forwarded substantial monies to Planned Parenthood Federation of America, Inc. which used at least some of those funds for political advocacy, including the promotion of abortion.
- In the face of these large profits collected and retained by PPNNE and its affiliate Planned Parenthood Federation of America, Inc. and at a time when taxpayer support for for-profit and non-profit hospitals in New Hampshire has decreased in the past year, PPNNE would have received \$1.8 million in taxpayer funds had the Executive Council approved the provision of these funds to PPNNE. The Executive Council determined that state and federal taxpayer dollars should be dedicated to and expended for the needs of the people of New Hampshire, not on subsidizing a multi-million-dollar abortion company.
- There was no evidence presented to the Executive Council that any emergency or urgency existed in any area of New Hampshire with regard to the provision of family planning services. Indeed, the Executive Council was informed that family planning services had been and would continue to be provided in all New Hampshire areas, including the areas specified in the Grant award, Exhibit A, by PPNNE and other family planning services

¹ See www.plannedparenthood.org/files/PPFA/PPFA_FY_2010_990_Public_Disclosure_Copy.PDF

providers, including, without limitation, Manchester Community Health Clinic, Derry's Parkland Medical Center, West Lebanon's Dartmouth Hitchcock, Keene's Cheshire Medical Center, Claremont's Valley Regional Hospital, and Exeter's Exeter Hospital.

- As is clear from the foregoing, there was absolutely no basis for HHS's determination that services would not be available in New Hampshire areas of Claremont, Derry, Exeter, Keene, Manchester, and West Lebanon. Moreover, as is evidenced by attached Exhibit C, the NHDHHS related to HHS that "PPNNE as well as other agencies continue to provide health services" in some of these areas.
- Though requested by the Executive Council, there was no assurance provided to the Executive Council by the NHDHHS or others, that funds, if awarded to PPNNE by the Executive Council, would not be utilized to directly or indirectly support PPNNE's abortion services, its distribution of free condoms, and/or its contributions to PPNNE's affiliated "lobbying" organization Planned Parenthood Federation of America, Inc.
- In contravention of § 1001(b) of the Public Health Service Act, the Secretary and/or HHS have failed to take into account the number of patients to be served.
- In contravention of § 1001(b) of the Public Health Service Act, the Secretary and HHS have failed to take into account the extent to which family planning services are needed locally.
- In contravention of § 1001(b) of the Public Health Service Act, the Secretary and HHS has failed to take into account the relative need of the applicant PPNNE.
- In contravention of § 1001(b) of the Public Health Service Act, the Secretary and HHS have failed to insure the right of local and regional entities the right to apply for direct grants, a right that this section requires be protected by the Secretary.
- The award of the Grant has resulted in a violation of § 1007 of the Public Health Service Act in that funds provided to PPNNE pursuant to the Grant have been and/or will be used to directly and/or indirectly subsidize programs administered by PPNNE where abortion is a method of family planning.
- The award of the Grant has resulted in a violation of Federal Acquisition Regulations (herein "FAR") 5.203 which require that proposed contract actions be published for 15 days, absent the establishment of a shorter posting period.
- The sole source award of the Grant violated the FAR and the HHS Acquisition Regulation System in, among other ways, the following material respects:
 - No "approval" package was prepared by the contracting officer and staffed through HHS acquisition channels to the Secretary in advance of the award of the Grant. See HHS Acquisition Regulation System, Subpart 306.302-7.

- No Determination and Findings or justification and analysis regarding the need to sole source the award of the Grant and/or to award the Grant without full and open competition was prepared by the Contracting Officer in advance of the award of the Grant. *See* 10 U.S.C. § 2304(f); HHS Acquisition Regulation System, Subpart 306.303; *Turbo Mechanical, Inc.*, B-231807, September 29, 1988, 88-2 CPD para. 299 at 3-4.
- In advance of the Grant, no justification was prepared by the HHS program office and/or furnished to the contracting officer explaining why full and open competition was not feasible.
- The unusual and compelling urgency exception to full and open competition required HHS to demonstrate serious injury; it has not done so and is unable to do so. *See, e.g.*, FAR 6.302-2.
- With specific regard to this and related issues, attached hereto as Exhibit C is an August 2, 2011 letter from the Director of NHDDS to Region 1 HHS Administrator Michael R. Milner that, in response to question #2, relates that “PPNNE as well as other agencies continue to provide health services” in the allegedly affected areas.

In addition to the foregoing, insomuch as the fiscal year ends September 30, 2011 and the award was made on September 13, 2011 effective as of September 1, 2011, it appears clear that noncompetitive procedures were utilized to expend expiring funds in violation of law. *See AAI ACL Tech., Inc.*, B258679.4 <http://archive.gao.gov/legald426;1/155701.pdf>.

As a matter of separate concern, though Protestors made repeated requests for a copy of a September 6, 2011 letter from New Hampshire Senator Jeanne Shaheen to HHS Secretary Kathleen Sebelius, Protestors have only recently been provided with a copy of this September 6, 2011 letter in which Senator Jeanne Shaheen urges HHS Secretary Kathleen Sebelius to “consider a direct contract with Planned Parenthood of Northern New England.” *See* attached Exhibit F. Protestors are concerned about the appearance of impropriety caused by the HHS award of the Grant just six (6) days after this letter from Senator Shaheen, particularly given the fact that, contrary to the information HHS had provided to Commissioner Toumpas who had in turn informed the Executive Council, competitive offers for family planning services were not, in fact, sought by HHS.

The award of the Grant by HHS was, as demonstrated by the foregoing facts and circumstances, clearly improper, irregular, unnecessary, in contravention of the authority of the Executive Council and its duly elected members, and in disregard of the

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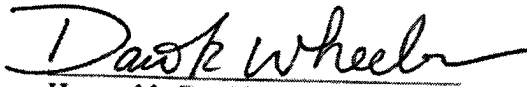
Alliance Defense Fund

sovereignty of the State of New Hampshire. See *McGregor Mfg., Corp.*, B285341, August 18, 200, 2000 CPD para. 151 at 6.

For the foregoing reasons, the Protestors respectfully request HHS to declare the Grant void.

In the event that you require additional information, please do not hesitate to contact us.

Sincerely,



Honorable David Wheeler
Executive Councilor
State of New Hampshire
5232 Mason Road
Milford, NH 03055

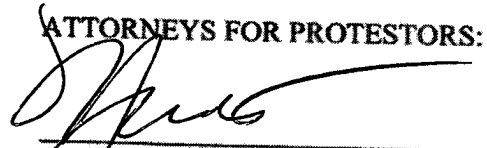


Honorable Raymond Wiczorek
Executive Councilor
State of New Hampshire
1060 Ray Street
Manchester, NH 03104



Honorable Daniel St. Hilaire
Executive Councilor
State of New Hampshire
43 Hampton Street
Concord, NH 03301

ATTORNEYS FOR PROTESTORS:



Michael J. Norton, Senior Counsel
Steven H. Aden, Senior Counsel
Alliance Defense Fund
7951 E. Maplewood Avenue, Suite 100
Greenwood Village, CO 80111
480-388-8163

Attachments

cc: The President

The Honorable Kathleen Sebelius
Secretary of Health and Human Services

The Honorable Daniel R. Levinson
Inspector General
U. S. Department of Health and Human Services

The Honorable Cliff Stearns
Chairman, Subcommittee on Oversight and Investigations
U.S. House of Representatives Committee on Energy and Commerce

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Replacement Grant for Title X Family Planning Services in Parts of New Hampshire

Agency: Office of Population Affairs, Office of the Assistant Secretary for Health, Department of Health and Human Services.

Action: Notice of Replacement Grant for Title X Family Planning Services in Parts of New Hampshire.

SUMMARY: The Office of Population Affairs, Office of Family Planning will be awarding a non-competitive, urgent replacement grant to the Planned Parenthood of Northern New England (PPNNE) in New Hampshire to provide Title X family planning services in the following areas of the state: West Lebanon, Claremont, Keene, Derry, Exeter, and Manchester. Those areas, constituting more than half of the state, have been without access to Title X family planning services since July 1, 2011, after the New Hampshire Executive Council voted not to renew the New Hampshire Department of Health and Human Services' contract with PPNNE. The replacement grant is intended to minimize the interruption of needed clinical services and to protect the public health in New Hampshire.

SUPPLEMENTARY INFORMATION:

Grantee of record: New Hampshire Department of Health and Human Services.

Intended recipient of award: Planned Parenthood of Northern New England.

Award amount: \$1,016,866; \$359,765 in Federal Fiscal Year (FY) 2011 funds, and estimated \$657,101 in FFY 2012 funds subject to the enactment of appropriations and availability of funds.

Authority: Section 1001 of the Public Health Service (PHS) Act (42 U.S.C. § 300).

CFDA Number: 93.217

Project Period: September 1, 2011 to December 30, 2012.

JUSTIFICATION FOR THE EXCEPTION TO COMPETITION:

The New Hampshire Department of Health and Human Services (NHDHHS) submitted a non-competing application for Title X Family Planning Services on September 28, 2010, that included a plan to provide clinical services in all counties in the state, and outlined the communities where services would be offered via contracts with a variety of community agencies. A Notice of Grant Award was issued by the Department of Health and Human Services (HHS) effective January 22, 2011, in response to the specific plans laid out in this application. On August 12, 2011, the NHDHHS submitted a letter to HHS, relinquishing the portion of their Title X grant award that had been intended for Planned Parenthood of Northern New England (PPNNE). Planned Parenthood of Northern New England had been a longstanding contractor with the NHDHHS, and provided Title X family planning services in the previously identified areas of the state.

Title X family planning services have not been provided in the areas of the state previously served by PPNNE since the contract between NHDHHS and PPNNE ended on June 30, 2011. There is an urgent need to reinstate services with an experienced provider that is familiar with the provision of Title X family planning services and applicable laws, regulations and administrative requirements, and has a history of successfully providing services in these areas of the state.

Because of PPNNE's prior experience providing Title X family planning services in the identified areas of New Hampshire, the Office of Population Affairs (OPA) will be awarding a sole source, temporary replacement grant award to PPNNE for a period of 16 months. This replacement grant will cover the time period from September 1, 2011, through December 30, 2012. The entire state of New Hampshire, including local and regional public or private nonprofit entities, will be eligible to compete for funding in FY 2013, in response to a notice that OPA plans to issue, announcing the availability of FY 2013 funds for Title X family planning services projects, with a project period starting December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Moskosky at susan.moskosky@hhs.gov or by phone, 240-453-2888.

Dated:

Marilyn J. Keefe, MPH

Deputy Assistant Secretary for Population Affairs



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FY11 Replacement Grant for Title X Family Planning Services in Parts of New Hampshire

Synopsis

Full Announcement

Application

The synopsis for this grant opportunity is detailed below, following this paragraph. This synopsis contains all of the updates to this document that have been posted as of **09/12/2011**. If updates have been made to the opportunity synopsis, update information is provided below the synopsis.

If you would like to receive notifications of changes to the grant opportunity click [send me change notification emails](#). The only thing you need to provide for this service is your email address. No other information is requested.

Any inconsistency between the original printed document and the disk or electronic document shall be resolved by giving precedence to the printed document.

Description of Modification

none

Document Type:	Modification to Previous Grants Notice
Funding Opportunity Number:	PA-FPH-11-016
Opportunity Category:	Discretionary
Posted Date:	Sep 12, 2011
Creation Date:	Sep 13, 2011
Original Closing Date for Applications:	Sep 14, 2011 No applications are been accepted under this announcement: this is announcing a Sole Source award only.
Current Closing Date for Applications:	Sep 14, 2011 No applications are being accepted under this announcement: this is announcing a Sole Source award only.
Archive Date:	Oct 14, 2011
Funding Instrument Type:	Grant
Category of Funding Activity:	Health
Category Explanation:	
Expected Number of Awards:	1
Estimated Total Program Funding:	
Award Ceiling:	\$1,016,866
Award Floor:	\$359,765
CFDA Number(s):	93.217 -- Family Planning_Services
Cost Sharing or Matching Requirement:	No

Eligible Applicants

Others (see text field entitled "Additional Information on Eligibility" for clarification)

Additional Information on Eligibility:

none

Agency Name

Office of Public Health and Science

EXHIBIT

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Description

The Office of Population Affairs, Office of Family Planning will be awarding a non-competitive, urgent replacement grant to the Planned Parenthood of Northern New England (PPNNE) in New Hampshire to provide Title X family planning services in the following areas of the state: West Lebanon, Claremont, Keene, Derry, Exeter, and Manchester. Those areas, constituting more than half of the state, have been without access to Title X family planning services since July 1, 2011, after the New Hampshire Executive Council voted not to renew the New Hampshire Department of Health and Human Services' contract with PPNNE. The replacement grant is intended to minimize the interruption of needed clinical services and to protect the public health in New Hampshire.

Link to Full Announcement

[FY11 Replacement Grant for Title X Family Planning Services in Parts of New Hampshire](#)

If you have difficulty accessing the full announcement electronically, please contact:

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Phone Number: 1-800-518-4726

Hours of operation are Monday-Friday from 7:00 a.m. to 9:00 p.m. Eastern Standard Time
support@grants.gov
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Synopsis Modification History

The following files represent the modifications to this synopsis with the changes noted within the documents. The list of files is arranged from newest to oldest with the newest file representing the current synopsis. Changed sections from the previous document are shown in a light grey background.

File Name	Date
Modification #1	Sep 13, 2011
Original Synopsis	Sep 13, 2011

EXHIBIT 2
PAGE 2 of 2



Nicholas A. Tompkins
Commissioner

José Thier Montero
Director

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN
SERVICES

29 HAZEN DRIVE, CONCORD, NH 03301-6527
603-271-4501 1-800-852-3345 Ext. 4501
Fax: 603-271-3827 TDD Access: 1-800-735-2964



August 2, 2011

RADM Michael Milner, DHSc, PA-C
Regional Health Administrator
US Public Health Service Region I
John F. Kennedy Federal Building
Room 2100
Boston, Massachusetts 02203

Dear RADM Milner,

This letter serves as the State of New Hampshire's response to the July 12, 2011 letter outlining your concerns with the execution of the grant awarded to the New Hampshire Department of Health and Human Services (NH DHHS) for the provision of family planning services under the Title X program.

As you are aware, on June 22, 2011, the New Hampshire Executive Council rejected a contract with Planned Parenthood of Northern New England (PPNNE) to provide Title X family planning services. The expectation was that the contract would be effective July 1, 2011.

New Hampshire shares your concern that access to Title X family planning services are being negatively impacted for a significant number of individuals in need of low-cost reproductive services in New Hampshire. We have worked in good faith to explore all the options available to address our contractual obligation to provide statewide Title X family planning services, but due to the lack of a contract, there is currently no funded entity to provide Title X family planning services for the following areas of the state: West Lebanon area, Claremont area, Keene area, Derry area, Exeter area and Manchester area. For the Manchester area services for population 21 years of age and under will be covered by a contract awarded to Child Health Services.

Below are our responses to the questions provided in the letter dated July 12, 2011:

1. *Identify which agencies are no longer receiving Title X funding from NHDHHS as a result of actions taken by the state and the geographic areas affected.*

Response: Planned Parenthood of Northern New England was not awarded a contract on June 22, 2011. The geographic areas affected include the areas around West Lebanon, Claremont, Keene, Manchester (with the exception of population 21 and under), Derry and Exeter.

2. *In the geographic areas of the state where Title X services are not currently being provided, provide proposed agencies (name and location) that will be providing Title X services to clients, as well as a timetable that indicates when services will be available in these areas of the state and how these services will be delivered*

EXHIBIT C
PAGE 1 of 3

Response: Although in some of these areas PPNNE as well as other agencies continue to provide health services. New Hampshire cannot assure that the full scope of Title X services will be available for the remainder of CY 2011 in the identified areas.

3. Provide an estimate of the number of clients that were served by the agencies that no longer receive Title X funds, and identify the projected number of "displaced" clients that are expected to be served in each of the identified new service locations that are identified in response to Question 2.

Response: In CY 2010, Planned Parenthood of Northern New England (PPNNE) served the following by site:

Site	Number of Clients Served
West Lebanon	2,084
Claremont	1,369
Keene	2,268
Manchester	4,394
Derry	2,358
Exeter	1,805
TOTAL	14,278

Although not receiving Title X funding, PPNNE has reported that they continue to serve clients in those areas. The total number of clients served is unknown.

4. Provide written evidence that the proposed agencies can support the additional clients with their current capacity, and can provide services in a timely manner.

Response: Not applicable as per our response above.

5. Describe the plan for notifying clients that previously received care from the agencies no longer receiving Title X funds about plans for and access to family planning services based on a sliding fee schedule via Title X within their area.

Response: PPNNE reports that they continue to see clients and NHDHHS, through press releases and its web site, will convey where Title X and other affordable reproductive health care services are available.

6. If new providers will be sought to provide Title X services, describe the process by which this will be achieved and what actions that state will take to assure that these services are provided in accordance with Title X statute, regulations and guidelines, and in such a way as to meet the needs of the communities not currently being served.

Response: Not applicable as per our response above.

RADM Michael Milner, DHSc, PA-C
July 28, 2011
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We look forward to hearing from you with regards to next steps. Please do not hesitate to contact me for any clarifications or further information.

Sincerely,


José Thier Montero
Director

JTM:MR:mr

The Department of Health and Human Services' Mission is to join communities and families in providing opportunities for citizens to achieve health and independence.

EXHIBIT C
PAGE 3 of 3

Michael J. Norton

From: Rosenfeld, Betsy F (HHS/OASH) [betsy.rosenfeld@hhs.gov]
Sent: Monday, September 19, 2011 3:28 PM
To: Michael J. Norton
Cc: Catherine Foster; 'MTierney@wadleighlaw.com'; Steve Aden
Subject: Re: Replacement Grant for Title X Family Planning Services in Parts of New Hampshire

Hi Mr. Norton -

Thanks for the detailed requests below.

As promised, I'm getting back to you after my meetings this afternoon. A representative from the Office of Grants Management in DC will reach you either today or tomorrow (bearing in mind the two-hour time change) to talk about the issues below, rather than my trying to carry the answers back to you outside my area of expertise.

I am hopeful that person can answer all your questions.

Stand by for more, and please be in touch if you need to be - Betsy Rosenfeld

Betsy F. Rosenfeld, J.D.
Deputy Regional Health Administrator
Region I (New England)
US Department of Health and Human Services
Office of the Assistant Secretary for Health (OASH)
JFK Federal Building
15 New Sudbury Street, Suite 2100
Boston, MA 02203
P: 617-565-1505
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EXHIBIT D
PAGE 1 of 2

From: Michael J. Norton [mailto:mjnorton@telladf.org]
Sent: Monday, September 19, 2011 01:58 PM
To: Rosenfeld, Betsy F (HHS/OASH)
Cc: Catherine Foster <cfoster@telladf.org>; Michael Tierney <MTierney@wadleighlaw.com>; Steve Aden <saden@telladf.org>; Michael J. Norton <mjnorton@telladf.org>
Subject: Replacement Grant for Title X Family Planning Services in Parts of New Hampshire

September 19, 2011

Thank you, Ms. Rosenfeld, for your courtesy in returning my call. As we discussed, I would appreciate receiving, as soon as is reasonably possible, the following documents and information about PA-FPH-11-016 Grant, CFDA Number 93.217,

awarded on September 13, 2011 by HHS's Office of Population Affairs, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services. According to the announcement I was able to locate on line, the award amount was \$1,016,866 for FY 2011 and \$657,101 for FY 2012 for a project period from September 12, 2011 to December 30, 2012.

Specifically, I request the following:

1. A copy of the solicitation resulting in the original Notice of Grant Award issued by HHS effective January 22, 2011.
2. Any underlying Justification and Analysis relating to the solicitation resulting in the original Notice of Grant Award issued by HHS effective January 22, 2011.
3. A copy of the Notice of Grant Award issued by HHS effective January 22, 2011.
4. A copy of the solicitation resulting in the Notice of Replacement Grant for Title X Family Planning Services in Parts of New Hampshire Award issued by HHS, as related by you to me, effective September 13, 2011.
5. Any underlying Justification and Analysis relating to the solicitation resulting in the Notice of Replacement Grant for Title X Family Planning Services in Parts of New Hampshire Award issued by HHS, as related by you to me, effective September 13, 2011.
6. A copy of the Notice of Replacement Grant Award issued by HHS on September 13, 2011 effective September 1, 2011.
7. Details as to the deadline for the filing of any protest to the Notice of Replacement Grant Award issued by HHS on September 13, 2011 effective September 1, 2011, including:
 - a. The deadline for the filing of any such protest.
 - b. The HHS officers with whom any such protest is to be filed.

I understand HHS has had a number of inquiries about this matter and has determined to treat this request as a Freedom of Information Act request. As we discussed, however, it is my preliminary understanding that any such appeal must be filed within 10 days from the date of the award, i.e., on or before September 23, 2011. I would appreciate confirmation of this understanding and, as we discussed, expeditious responses to the above requests if a protest must be filed within that time. The materials requested ought to be readily available on line, but do not seem to be; though it may be I am not looking in the right place.

Thank you again for your professional courtesy.

Best,



Michael J. Norton
Senior Counsel
480-388-8163 (Office)
303-818-6811 (Cell)
303-694-3800 (Fax)
MJNorton@telladf.org
www.telladf.org

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Michael J. Norton

From: Michael J. Norton
Sent: Friday, September 23, 2011 1:16 PM
To: Bettencourt, Alice (HHS/OASH)
Cc: Michael J. Norton
Subject: RE: FY10 Title X Family Planning Services Funding Opportunity Announcement

September 23, 2011

Thank you, Ms. Bettencourt.

I understand HHS has treated my request for what ought to be readily available documents as a formal Freedom of Information Act request and that the HHS FOIA designate will be in contact with me in due course. As we telephonically discussed, one of the documents I wish to receive is the August 12, 2011 letter from the New Hampshire Department of Health and Human Services referred to in the September 13, 2011 Notice of "Replacement Grant for Title X Family Planning Services in Parts of New Hampshire" by which NHDHHS reportedly relinquished its "portion of the Title X grant award which had been intended for Planned parenthood of Northern New England (PPNNE).

Thank you for your professional courtesy.



ALLIANCE DEFENSE FUND

Defending Our Great Liberty

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From: Bettencourt, Alice (HHS/OASH) [<mailto:alice.bettencourt@hhs.gov>]
Sent: Friday, September 23, 2011 1:06 PM
To: Michael J. Norton
Subject: FY10 Title X Family Planning Services Funding Opportunity Announcement

Mr. Norton,

Attached please find the FY10 Title X Family Planning Services Funding Opportunity Announcement. I believe this is the announcement you were seeking. It is publicly available via Grants.Gov if you search on the CFDA number and include all Closed and Archived announcements.

Alice Bettencourt
Director
Office of Grants Management
Office of the Assistant Secretary for Health
U.S. Department of Health and Human Services
240-453-8822

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JEANNE SHAHEEN
NEW HAMPSHIRE

SUITE SH-520
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WASHINGTON, DC 20510
(202) 224-2841

United States Senate

WASHINGTON, DC 20510

The Honorable Kathleen Sebelius
Secretary
US Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

September 6, 2011

Dear Secretary Sebelius,

I write today to express my concern about the future of Title X family planning funding in New Hampshire.

As you are aware, on June 22, 2011, the New Hampshire Executive Council rejected a contract with Planned Parenthood of Northern New England (PPNNE) to provide Title X family planning services in New Hampshire. As a result of that decision, I am deeply concerned about the access to low-cost reproductive health services.

I understand that New Hampshire has relinquished the portion of the state's Title X Family Planning Services grant that had been intended for its contract with Planned Parenthood of Northern New England. As your agency gives consideration to alternative mechanisms that will provide access to low-cost reproductive health care in New Hampshire, I strongly urge you to consider a direct contract with Planned Parenthood of Northern New England.

For over 30 years, Planned Parenthood of Northern New England has provided essential health care services in New Hampshire under the federal Title X family planning program. The services provided by PPNNE are critical to helping people stay healthy and meet their reproductive needs. Last year, Planned Parenthood of Northern New England served 16,000 men and women through its Title X contract.

During the six years I was Governor of New Hampshire, PPNNE held the Title X contract with the state and I am very familiar with the high quality of care they provide. PPNNE is a critical provider in our state's health care safety net, and I hope that the your agency will work with them to continue making reproductive health care available in New Hampshire.

Sincerely,



Jeanne Shaheen
United States Senator

CC: Howard Koh, Assistant Secretary for Health, US Department of Health and Human Services

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----- Original Message -----

Subject: NH Family Planning Update

Date: Thu, 4 Aug 2011 10:41:16 -0400

From: NToumpas@dhhs.state.nh.us

To: [Governor and Executive Council.DHHS@dhhs.state.nh.us](mailto:Governor_and_Executive_Council.DHHS@dhhs.state.nh.us)

CC: JMontero@dhhs.state.nh.us, NToumpas@dhhs.state.nh.us, Pamela.Walsh@NH.Gov

Councilors, I wanted to bring you up to date on the status of the Title X

family planning issue. The update consists of two parts:

- a/ Summary of where we currently stand and
- b/ Copies of the communications to and from the Federal government on the issue to date.

a/ Summary:

1. The Department is making changes to the 10 approved contracts and will have them ready for your consideration at the August 24th meeting.
2. We have responded to a request for information from the federal government about how we would meet our contractual obligation to provide statewide access. As you know, we've explored a number of ideas over the past six weeks, but none would meet our requirement for statewide access. We have communicated that to the federal government. Please see the attached letter below dated August 2, 2011
3. Today, we received a response from Mr. Mike Milner acknowledging the receipt of the letter with a more detailed response by early next week. It is my hope that I will have that in advance of the August 10th Council meeting.
4. We have had several calls with the Federal people and we anticipate the following. I would caution that this assessment is NOT FINAL, but did want to give you a more detailed sense of where things are.
 - Based on our conversations with federal officials, we anticipate we will be found noncompliant with our contractual obligations of the grant award. So we will be "defaulted."
 - We expect the "default" will be for the remaining period of CY 2011 (July - Dec 2011) and for the full period of CY 2012 (Jan - Dec 2012).
 - The Regional Office stated that NH would default back federal funds equivalent to the total amount of the PPNNE contract for the timeframe of CY 2011 (July - Dec 2011) and for CY 2012 (Jan - Dec 2012). These amounts equate to: CY 2011: \$359,765 CY 2012: \$657,101
5. Federal officials have not yet informed us on what their process will be for the remainder of calendar year 11.
6. We expect that calendar year 2012 default funds will go out for competitive bid in August-September and would be awarded for January 1, 2012. Any entity (including the State of NH) could apply for these funds to cover areas that will not be covered by the State's revised family planning project plan. The service areas up for re-bid would include: West Lebanon, Claremont, Keene, Manchester, Derry and Exeter.
7. In the event that there is no fundable bidder for these areas, it is not known whether there would be a re-bid, or whether those areas would remain unserved through CY12. The Department's Division of Public Health Services will submit a noncompetitive application for CY 2012 for the parts of the state we would continue to cover - this is due October 1, 2011.
8. In the event that funding available for Title X services is decreased in the federal budget, any decrease for NH would be allocated across both service areas/grantees, so that the State would not bear the entire burden of the decrease.
9. In CY 2013, the total amount of funds allocated for NH Title X services would be put out to bid. This would be a competitive application and there could be multiple bidders. DPHS could determine at that time whether to continue with its revised service area or propose an alternative area.
10. There is no overlap of this effort and the State Plan Amendment we are

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working for an enhanced Family Planning benefit under the Medicaid program. The earliest that benefit would become available is in CY 2012.

Should you have any questions on this, please contact me directly.

b/ Correspondence from latest to earliest

Email response from Federal government, Mr. Michael Milner re the August 2, 2011 letter from Dr. Jose T. Montero.

Good morning Jose,

We are in receipt of your letter dated August 2, 2011 related to the FP program in New Hampshire. Our office will get back with you as soon as possible, probably early next week.

Thanks for officially letting us know your limitations.

Best regards,
Mike

Michael R. Milner, DHSc, PA-C
Rear Admiral, Assistant Surgeon General
United States Public Health Service
Office of the Assistant Secretary for Health
Regional Health Administrator, Region I
New England

Letter to Michael Milner from Dr. Jose. T. Montero dated August 2, 2011

(See attached file: Response To Federal Letter For NH Family Planning - 8-2-2011.pdf)

Letter from Michael Milner to Dr. Jose T. Montero dated July 12, 2011

(See attached file: Dr Montero Letter.PDF)

Nick Toumpas
NToumpas@DHHS.State.NH.US
(O) 603-271-4331 (C) 603-545-4995

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