



New York State Office for People with Developmental Disabilities

Contracts for Personal and Miscellaneous Services

Report 2009-S-41



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

August 23, 2010

Max E. Chmura
Acting Commissioner
Office for People with Developmental Disabilities
44 Holland Avenue
Albany, NY 12229

Dear Mr. Chmura:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of *Contracts for Personal and Miscellaneous Services*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objectives

One objective of our audit was to determine whether the Office for People with Developmental Disabilities (OPWDD) justified the need to contract for personal and miscellaneous services. Another objective was to determine whether OPWDD periodically reassessed personal and miscellaneous services contracts to identify what work could be deferred, eliminated, or reduced to save State funds.

Audit Results – Summary

Various directives from the New York State Division of the Budget and the Governor's Office include the need for State agencies to justify their personal and miscellaneous service contracts (Service Contracts) and to reassess whether they can be deferred, eliminated or reduced to help achieve overall budgetary reductions and related cost savings. These directives have added significance because in August 2008 the Governor required State agencies to achieve spending reductions of 10.35 percent for State fiscal year 2008-09. Subsequent to our fieldwork, the Governor again called for further reductions of 11 percent for future years. For the period April 1, 2006 through March 31, 2009, OPWDD had 1,075 Service Contracts funded through its State operations budget; 709 of these contracts totaling \$211 million were each valued at over \$50,000.

We examined 22 of these Service Contracts valued at \$17.2 million and reviewed related documents to determine whether OPWDD has complied with these requirements. We found no instances where OPWDD's operating units provided officials with any prior written justification when requesting that contracts be awarded. As a result, taxpayers can not be fully assured that OPWDD had, in fact, determined that all contracted services were necessary before seeking the contracts. We also found that OPWDD has not performed any periodic, top-to-bottom reviews of Service Contracts as required by State budget directives, although OPWDD has prepared annual reports listing its contracts awarded during the period, a description of the contracted services, and their current and historical costs.

OPWDD needs to periodically perform a comprehensive assessment of all outstanding Service Contracts to prioritize their importance or determine whether any can be cut back, postponed or eliminated. In this way, OPWDD may be able to identify opportunities to further reduce costs and save State funds. We note that if OPWDD achieved just a 10 percent savings on

the unspent amounts remaining on these existing Service Contracts, as it did with its other budgeted costs in 2008 and 2009, it could realize \$5 million in cost savings.

In response to our findings, OPWDD officials stressed that some contracts are health and safety-related, and accordingly, should not be cut. OPWDD officials also pointed to limits imposed by the Governor on civil service employee hiring in response to the State's current fiscal crisis, which they contend impact agency hiring decisions and make outside contracts more favorable to State agencies. Finally, they also noted that certain contracts involve federal funding where savings would not accrue to the State. While we acknowledge the need for OPWDD to maintain certain services and recognize that some contracts should not be cut, the top-to-bottom reviews we suggest may reveal ways that necessary services can be provided more efficiently and cost effectively.

Our report contains two recommendations directed toward formally justifying and periodically re-evaluating the need for Service Contracts. OPWDD officials agreed with our recommendations, but stressed their belief that the weaknesses we identified are really issues of documentation, not process. They reported several steps they are taking to ensure staff appropriately document their contract reviews within the procurement records.

This report, dated August 23, 2010, is available on our website at: <http://www.osc.state.ny.us>.
Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Introduction

Background

The Office for People with Developmental Disabilities (OPWDD) provides residential and family support services to more than 125,000 individuals with developmental disabilities throughout the State. OPWDD's regional Developmental Disabilities Services Offices (DDSOs) that provide services to consumers either directly or through voluntary agencies. To help achieve its mission, OPWDD enters into personal and miscellaneous service contracts (Service Contracts). Service Contracts typically cover such items as research and analysis, data processing, computer programming, emergency maintenance, sitter and transportation services for clients, janitorial and cleaning services, and snow removal.

The following directives issued from the New York State Division of the Budget (DOB) and the Governor set forth expectations for State agencies to make sure that expenditures, including Service Contracts, are justified and are periodically reassessed:

- State Budget Bulletin H-1025, which became effective July 31, 2003, requires agency management to review all contracts (both new and renewals), including those that involve service delivery to affected citizens, to ensure that lower priority, overlapping or otherwise inefficient activities are eliminated. This Bulletin was in effect until the end of our audit fieldwork in September 2009.
- State Budget Bulletin B-1178, which became effective April 21, 2008, requires agency management to scrutinize all programs and operations to identify opportunities to eliminate less important activities and spending on non-essential items. It further requires agencies to develop plans to identify cost-savings and recurring savings. In this regard, under B-1178, agencies are required to scrutinize spending for contractual services among several other items. Furthermore, B-1178 requires agencies to develop plans that include a framework for continuing fiscal year 2008-09 savings through to fiscal year 2011-12.
- State Budget Bulletin B-1183, which became effective August 21, 2008, requires State agencies to review all agency programs and operations to identify opportunities for eliminating less essential activities and spending on non essential items.
- On June 4, 2008, the Governor issued Executive Order No. 6 (Order) requiring State agencies not to enter into Qualified Personal Services

Contracts (e.g. engineering, research and analysis, data processing) exceeding \$1 million or more of personal service over any 12-month period unless the agency first determined that: (a) the contractor can carry out the task more efficiently or effectively than state employees; (b) the contractor can carry out the task for a lower cost than state employees; or (c) the contract is necessary to protect the public health or safety, or is for some other compelling reason.

Both the Budget Bulletins and the Order have added significance given the State's increasing fiscal difficulties. In this regard, in August 2008, the Governor directed that State agencies evaluate all programs and operations to identify opportunities to eliminate less essential activities and achieve spending reductions of 10.35 percent in State fiscal year 2008-09. As part of this responsibility, State agencies were to develop a detailed plan that described the agency's proposed process for reviewing/approving non-personal service spending. Agencies were expected to balance personal service and non-personal service reductions so as to not disproportionately impact either, and to ensure recurring savings in both categories.

Audit Scope and Methodology

One objective of our audit was to determine whether OPWDD justified the need for Service Contracts and the decision to contract out for those services. Another objective was to determine whether OPWDD reassessed Service Contracts to identify what can be deferred, eliminated or reduced to help cope with the State's fiscal difficulties. For the purposes of our audit, Service Contracts are those in which the majority of the costs associated with the contracts are for labor. Our audit period was from April 1, 2006 through March 31, 2009.

To accomplish our audit objectives, we initially sampled 50 Service Contracts funded from several areas of OPWDD's budget, including State Operations, Local Assistance and Aid-to-Localities appropriations. We did not select contracts for commodities, capital construction or other types of expenditures that are not service-related. The purpose of our review was to establish a general understanding of the procedures in place for each type of funding. Because the various Budget Bulletins, Executive Orders and Governor's requests for budget reductions have dealt most directly with each agency's State Operations funding, we limited our detailed examination to the 22 contracts in our sample that were funded through these appropriations and did not perform a complete review of contracts funded by Aid to Localities or Local Assistance appropriations. We have therefore limited our reporting to the issues surrounding these 22 contracts and their impact on OPWDD's State Operations budget.

The 22 contracts we examined were selected from a group of 709 contracts that each had a value of \$50,000 or more and were in effect during our audit period. The total award value of these contracts was \$211 million, while the 22 contracts we examined were valued at \$17.2 million. We selected the sample both randomly and judgmentally. Generally, we judgmentally selected contracts for which there appeared to be a higher likelihood that State staff would be able to perform the contracted work. In our review of the 22 contracts, we interviewed OPWDD officials and reviewed documentation prepared by OPWDD in accordance with the requirements set forth in relevant Budget Bulletins and Executive Orders.

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to OPWDD officials for their review and comment. Their comments were considered in preparing this final report and are included at the end of this report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office for People with Developmental Disabilities shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

**Contributors to
the Report**

Major contributors to this report were Frank Patone, Michael Solomon, Santo Rendon, Sal D'Amato, Richard Canfield, Raymond Louie, Unal Sumerkan and Dana Newhouse.

Audit Findings and Recommendations

Justification of Personal and Miscellaneous Service Contracts

We selected a sample of 22 Service Contracts supported by State Operations funding, and reviewed available documentation to determine whether the need for the services, and the decision to contract for them, was justified with supporting documentation. We found that in no instance did the requesting department or DDSO provide written prior justification for the services to OPWDD contracting or procurement officials. As a result, there is no assurance that OPWDD had, in fact, determined that the contracted services were necessary before seeking the contracts, nor that it had considered alternatives to contracting out prior to making the decision to procure the services from a contractor. Such alternatives include having the work, or part of the work, performed by in-house staff or by other State agencies. As such, there is no assurance that contracting out was the most effective and cost efficient way to proceed in each instance.

In response to our audit findings, OPWDD officials prepared written statements explaining the reasons why these contracted services could not be performed in-house. However, these justifications were developed after our audit began and as a result did not demonstrate the decision-making process which took place when contracts were being considered. OPWDD officials also noted that the Governor has charged State agencies with limiting civil service employee hiring in response to the current fiscal crisis. They emphasize that this impacts State agency hiring decisions and thereby has the net effect of making outside contracts more favorable to State agencies. However, we note that the hiring freeze did not begin until July 2008. In contrast, many of the contracts in our sample were initiated well before that date, when these concerns should not have been a factor.

Still, we acknowledge that there are times when outside consultants must be hired. However, even in these cases, a documented analysis is important to fully support that OPWDD's conclusions are correct and that opportunities and options for cost savings have been fully considered.

Reassessment of Personal and Miscellaneous Service Contracts

DOB Bulletin H-1025 requires a justification of each agency's current and planned contractual agreements. Each agency is directed to perform periodic top-to-bottom reviews of all contracts (both new and renewals), including those that involve direct service delivery to affected citizens. The goal of these reviews is to curtail expenditures by eliminating all lower priority, non-essential, overlapping or otherwise inefficient contracted activities. The agency must also report the results of its reviews to DOB

indicating the actions recommended (or already taken) to eliminate or revise contracts to achieve savings while still ensuring the delivery of necessary services. At a minimum, the report should include summary fiscal information such as the total number of contracts reviewed, the value of each contract (or group of contracts), and the total amount of savings that will be achieved by eliminating or revising these contracts.

We found that OPWDD has not performed the periodic reviews required by the Bulletin, but did submit annual reports that list new and renewed Service Contracts awarded during the period, a description of the contracted service, and their current and historical costs. OPWDD has not performed any comprehensive assessment of existing Service Contracts to prioritize their importance or determine whether any can be cut back, postponed or eliminated. We recommend that OPWDD comply with the Bulletin and perform the required top-to-bottom reviews of all Service Contracts.

As of September 30, 2009, OPWDD had expended about \$53 million against the \$103 million total value of existing Service Contracts; leaving over \$50 million left to be spent. If OPWDD officials could achieve just a 10 percent spending reduction on the remaining balances of these contracts, as it did with its other budgeted costs in 2008 and 2009, it could realize more than \$5 million in cost savings. In response to our findings, OPWDD officials stated that some contracts are health and safety related, and accordingly, should not be cut. Although we acknowledge the need for OPWDD to maintain certain services, the top-to-bottom reviews may still reveal ways that such services can be provided more efficiently and cost effectively.

Recommendations

1. Executive management should communicate to appropriate staff the requirement to support Service Contracts with written justifications of the need for the service, the appropriate level of service, and the need to contract out.
2. Instruct managers to periodically reassess all Service Contracts to identify opportunities to suspend, eliminate, reduce or bring them in-house, and to document their determinations.

Agency Comments



NYS Office of Mental Retardation and Developmental Disabilities

Putting People First



David A. Paterson, *Governor*
Diana Jones Ritter, *Commissioner*

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July 6, 2010

Frank Patone, CPA
Audit Director
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Division of State Government Accountability
123 William Street - 21st Floor
New York, NY 10038

Mr. Patone:

The Office of Mental Retardation and Developmental Disabilities (OMRDD) has reviewed the Office of the State Comptroller's draft report (Report No: 2009-S-41) pertaining to Contracts for Personal and Miscellaneous Services.

Our responses to the findings contained in the report are attached for your consideration. Please be assured that OMRDD is committed to addressing and resolving all of the issues identified in your audit. However, as you will note in our attached response, it's our belief that the draft report does not provide a balanced picture. As such, we respectfully request that the report be revised to more accurately reflect the results of the review and OMRDD's efforts as a whole.

If you have any questions or concerns, please do not hesitate to contact me directly at 518.474.4376 or Mary.E.Peck@omr.state.ny.us.

Sincerely,

Mary E. Peck
Director, Office of Internal Control

Attachment

cc: Commissioner Ritter
Mr. Chmura
Mr. Moran
Mr. Nellegar
Mr. Sleasman
Mr. Smith

We help people with developmental disabilities live richer lives.

Office of Mental Retardation and Developmental Disabilities (OMRDD)
Response to the Office of the State Comptroller's (OSC)
Draft Audit Report (2009-S-41)
Contracts for Personal and Miscellaneous Services

GENERAL COMMENTS

In general, we agree with the report's recommendations and acknowledge that there are opportunities for improvement in our contract review and documentation standards. As noted in our formal response below, we will be taking the appropriate corrective actions to address these issues. That being said, we have concerns regarding the wording and tone of the report itself, and we feel that it inaccurately portrays OMRDD's stewardship over personal service contracts and procurement as a whole.

By OSC's own statements, the purpose of this review was to determine whether the need for the contracted service was justified; whether any alternatives were explored prior to contracting out the services to a vendor, such as having the services performed by OMRDD staff or other agencies; and whether any effort had been made over the contract terms to suspend, delay or postpone the work, particularly in light of the current State fiscal crisis.

As the examples below will illustrate, the majority of the contracts selected by the auditors are not appropriate for comparison to this criteria, based on the types of services required. Furthermore, the services reviewed in the sample do not lend themselves to the alternate methods sought by OSC. Our weakness, which we will address, is one of preparing and maintaining appropriate documentation, not the procurement decision-making process itself.

The preliminary findings report summarized OSC's review of 50 contracts. However, 28 of those items were not discussed in the draft report, and we were not advised of any related findings. Of the remaining 22 (identified as the sample in the report):

- Three contracts were entered into to oversee the care of Willowbrook class members as required under a court mandate.
- Four contracts are "single source" federally funded grants to procure time-limited services; there is no benefit/cost savings to not applying for the grants and not spending the grant funds.
- Two contracts (one for a handicapped van conversion contract and the other for person-centered planning services) are highly specialized. As such, it would be unlikely that state employees would possess the necessary skills and expertise to undertake these services.
- Two contracts were with outside CPA firms to conduct audits of voluntary providers. We provided the auditors with information including the rationale for the out-sourcing of this audit function and the assessment that these contracts were more cost-effective than state employees performing the functions. Additionally, in 2008 we successfully re-negotiated with both CPA firms to reduce the amount of billable hours for audit services and informed the firms in question that the number of audits assigned to them would be reduced. These efforts alone resulted in substantial savings.

The statement in the report that the auditors looked at 22 contracts and found no instances of prior written justification, and therefore there is no assurance that the contracted services were necessary, is misleading. The 11 contracts described above represent more than half of the \$17.2 million stated in the report. If you also consider the 28 contracts that were included in the preliminary findings report but not the draft report, then there is evidence of justification for the vast majority of contract dollars in the

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* See State Comptroller's Comments, page 19.

sample. By sampling 50 contracts but only reporting on 22 of them, it puts the error rate of the findings themselves out of context.

Finally, the statement that OMRDD has not performed any periodic reviews of the contracts and had "...merely prepared annual reports listing its new and renewed contracts awarded during the period..." implies that we prepared the list without any scrutiny or review of the contracts for savings. We believe the above example of the two CPA contracts shows otherwise.

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All of these items were discussed with the auditors throughout the audit process, but are not reflected in the draft report. Please understand, we're not claiming that we did an appropriate review for every contract. As previously stated, there are definitely opportunities for improvement and we will be reviewing our current policies and procedures to identify and respond to any control weaknesses, with the intent of strengthening our procurement process as a whole. However, it's our belief that the draft report does not provide an accurate and balanced picture. As such, we respectfully request that the report be revised to more accurately reflect the results of the review and OMRDD's efforts as a whole.

RESPONSE TO THE RECOMMENDATIONS:

Recommendation #1:

Executive management should communicate to appropriate staff the requirement to support Service Contracts with written justifications of the need for the service, the appropriate level of service, and the need to contract out.

Response

The Division of Fiscal and Administrative Solutions will review, and revise as necessary, all related policies and procedures to ensure that the documentation required for service contracts is consistent with all appropriate directives, and maintained within the procurement record. Updated guidance will be disseminated to all relevant OMRDD staff.

Recommendation #2:

Instruct managers to periodically reassess all Service Contracts to identify opportunities to suspend, eliminate, reduce or bring them in-house, and to document their determinations.

Response

We agree that in the current fiscal climate, efficiencies should be considered whenever possible and periodic reviews may help to identify opportunities. That being said, we believe the weakness identified in your fieldwork is not one of process, but rather, of documentation. The periodic reviews of contract performance are being performed, but we have not consistently maintained the appropriate level of documentation within the procurement record. As stated in our response to Recommendation #1, OMRDD will provide updated guidance to all staff involved in the procurement process.

We thank you for the opportunity to comment and look forward to working with you on the final report. Should you have any questions, please don't hesitate to contact Mary E. Peck, Director of Internal Control, at 518-474-4376 or Mary.E.Peck@omr.state.ny.us.

* See State Comptroller's Comments, page 19.

State Comptroller's Comments

1. We recognize that there will always be a need to contract out for some services. However, without appropriate documentation to justify the need for each contract, taxpayers have less assurance that OPWDD's decision-making process has in fact considered all appropriate alternatives.
2. We originally sampled 50 Service Contracts funded from several areas of OPWDD's budget, including State Operations, Local Assistance and Aid-to-Localities appropriations to obtain a general understanding of the procedures in place for each type of funding. However, because the various Budget Bulletins, Executive Orders and Governor's requests for budget reductions have dealt most directly with State Operations funding, we only performed a complete review of the 22 contracts in our sample that were funded through these appropriations. We have therefore limited our reporting to the issues surrounding these 22 contracts and their impact on OPWDD's State Operations budget.
3. Federal funding for these contracts flows through OPWDD's State Operations budget, and is therefore subject to the same requirements for justification and reassessment that are outlined in the various Budget Bulletins and Executive Orders cited in our report. We do not believe OPWDD should disregard potential opportunities to reduce public spending simply because resulting savings may benefit another level of government.
4. Our report has been revised for clarity based on OPWDD's comments.