



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 2, 2016

Ms. RoAnn M. Destito
Commissioner
Office of General Services
Corning Tower – 32nd Floor
Albany, NY 12242

Re: Report BSE-2014-0002

Dear Commissioner Destito:

We examined¹ payments made by the Office of General Services (OGS) to 11 vendors for services provided to the Department of Health, Department of Transportation, and Office of Mental Health (collectively, the agencies) from February 1, 2015 through April 30, 2015 under Hourly Based Information Technology Services (HBITS) contracts. During our examination period, OGS paid the 11 vendors nearly \$8 million for services provided at the agencies. We examined payments totaling about \$2.4 million for services provided by 86 consultants. Our objectives were to determine if OGS paid vendors: (i) at the appropriate hourly bill rates; (ii) for consultants with the required months of experience; and (iii) exclusively for hours worked.

A. Results

We found OGS does not have an effective process to ensure a candidate consultant's (candidate) qualifications meet the mandatory qualifications specified by the agencies (e.g., months of experience), so OGS could not ensure it paid the correct hourly bill rates. In particular, OGS does not ensure its vendors fulfill their contractual obligation to verify that a candidate has the mandatory qualifications specified by the agencies, nor do OGS staff verify the mandatory qualifications. During our examination, impediments prevented us from obtaining information about certain candidates' qualifications. While some information was not available to the State or vendors for various reasons, such as the prior employer no longer being in business, other information was available only to vendors and not the State. Therefore, it is critical that OGS require its vendors to fulfill their contractual obligations as, without this information, the State does not have reasonable assurance that consultants are qualified and hourly bill rates are appropriate. We identified matters of lesser significance when we reviewed the hourly bill rates and hours worked. We made OGS and agency officials aware of these matters at the closing conference.

¹ We performed our examination in accordance with the State Comptroller's authority set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law.

We shared a draft report with OGS officials and considered their comments (Attachment A) in preparing this final report. OGS officials stated that our conclusory findings are without merit or factual basis, and fail to recognize the numerous controls built into the HBITS contracts and the candidate onboarding process. As discussed in the State Comptroller's Office comments on OGS's response (Attachment B), we determined that OGS could not be certain that they did not overpay HBITS vendors based on the material control weaknesses at HBITS vendors and OGS.

B. Background and Methodology

In November 2012, the Division of the Budget and OGS jointly implemented the HBITS contracts to create a cost- and time-efficient means for agencies to procure short-term hourly information technology services. Each HBITS contract includes a pricing schedule that defines the hourly bill rate for standard and specialty job titles. The hourly bill rates for standard titles are based on job title, skill level, skill demand level, and region of service. The hourly bill rates for specialty titles are based upon job title and region. In addition, the bill rates for all standard and most specialty title consultants are based in part on months of experience. Bill rates vary within job titles, depending on the consultant's skill level and skill demand level, and may differ by as much as \$72.29 per hour.

According to the HBITS contracts, to request a consultant an agency must complete and submit to OGS a standard form that identifies the job title and skill level desired (collectively, "mandatory qualifications"). OGS reviews, approves, and posts the agencies' requests to solicit responses from HBITS vendors. Prior to presenting a consultant to OGS as a candidate for the position, an HBITS vendor must verify that the consultant has the mandatory qualifications specified by an agency. Upon receiving a vendor response, OGS must ensure the candidate's qualifications meet the mandatory qualifications specified by the agency. The agency then interviews the candidate to assess his or her technical abilities. Once the interview process is complete, the agency either selects a candidate to hire or rejects all proposed candidates if no one is suitable for the position.

C. Details of Findings

We conducted site visits to seven HBITS vendors who employed 41 of the 86 consultants we examined. We found five vendors did not, and two vendors did not consistently, verify the months of experience claimed by their candidates pertaining to the mandatory qualifications requested. We also interviewed OGS officials and found they compare the information on a vendor's candidate response form to the agency's request to ensure the candidate's qualifications meet the mandatory qualifications specified by the agency, but do not independently verify the information. Consequently, consultants may not meet the required qualifications and, therefore, OGS may have paid incorrect hourly bill rates.

We attempted to verify that 53 of the 86 consultants we examined, including the 41 consultants described above, had the months of experience required to earn the hourly bill rates the vendors were paid. We could only verify that 22 of the 53 consultants (42 percent) had the necessary months of experience. For the remaining 31 consultants, we could not obtain sufficient, appropriate evidence to verify their months of experience for various reasons, including: (i) the prior employer referred us to the verification service it used, however, that service would not cooperate with our examination; (ii) the prior employer did not maintain employment records for consultants; or (iii) the HBITS vendor did not obtain contact information for the candidates' prior supervisors who could verify the months of experience required by the agency.

As a result, we could not determine if OGS paid vendors the appropriate hourly bill rates for work performed by the 31 consultants. Because hourly bill rates vary by and/or are dependent upon months of experience, and months of experience is not always verified, a portion of the \$841,084 OGS paid for their work may have been inappropriate. It is critical that OGS require its vendors to fulfill their contractual obligations as, without this information, the State does not have reasonable assurance that consultants are qualified and hourly bill rates are appropriate.

Had OGS held its vendors accountable for verifying candidates' months of experience, and required its vendors to document the work performed, OGS could have ensured candidates' hourly bill rates were appropriate. For instance, HBITS vendors could have obtained prior employment information from an employment verification service that did not cooperate with our examination, and may not have cooperated with inquiries conducted by OGS. Since neither the seven HBITS vendors that we interviewed nor OGS verify candidates' months of experience, there is a risk that OGS paid the seven vendors higher hourly bill rates than was due and owing based on the consultants' actual months of experience. Thus, as bill rates vary within job titles by as much as \$72.29 per hour, a significant portion of the \$47 million paid to the seven vendors since the inception of the HBITS contracts may be inappropriate.

In response to this report, OGS officials stated that our conclusory findings are without merit or factual basis, and fail to recognize the numerous controls built into the HBITS contracts and the candidate onboarding process. As we note in Attachment B, our determination that OGS may have overpaid HBITS vendors is based on material control weaknesses at HBITS vendors and OGS that resulted in an ineffective method to validate consultant candidates' stated months of experience. Because the contract links months of experience to consultants' hourly rates, OGS does not have reasonable assurance that it paid appropriate hourly rates.

In its response to this report, OGS officials also described their process to identify qualified candidates. We found this process is sound provided that an independent party validates the information on the candidate response forms. There are various approaches to validate information on the response forms. For instance, OGS may require vendors to verify that each candidate has the mandatory qualifications specified by the agency and to document the steps

taken to verify the information. OGS could develop a risk-based approach to review the prior work performed by vendors to verify candidates' qualifications.

Recommendation

- 1) *Ensure HBITS vendors obtain the information necessary to verify candidates have the months of experience necessary to meet the mandatory qualifications specified by the agencies and the hourly rates billed.*

We would appreciate your response to this report by September 30, 2016, indicating any actions planned to address the recommendation in this report. We thank the management and staff of the Office of General Services, Department of Health, Department of Transportation, and Office of Mental Health for the courtesies and cooperation extended to our auditors.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Enc: Attachment A
Attachment B

cc: Dr. Howard A. Zucker, Commissioner, DOH
Matthew J. Driscoll, Commissioner, DOT
Dr. Ann Marie T. Sullivan, Commissioner, OMH
Diane Christensen, Director of Internal Audit, DOH
Theresa Vottis, Director of Internal Audit, DOT
Wendy Fox, Director of Internal Audit, OMH
Theresa Bonneau, Director of Internal Audit, OGS



Office of General Services

ANDREW M. CUOMO
Governor

ROANN M. DESTITO
Commissioner

June 20, 2016

Mr. Bernard J. McHugh, Director of State Expenditures
Office of the State Comptroller
Division of State Expenditures
110 State Street
Albany, NY 12236-0001

Re: Response to Draft Report BSE-2014-0002

Dear Mr. McHugh:

In accordance with Section 170 of the Executive Law, the Office of General Services ("OGS") is responding to your Draft Report BSE-2014-0002 (the "Report"), which examined payments made by OGS to 11 Contractors for services provided to the Department of Health, Department of Transportation, and Office of Mental Health from February 1, 2015 through April 30, 2015 under the Hourly-Based Information Technology Services ("HBITS") contracts. The Office of the State Comptroller ("OSC") examined payments totaling \$2.4 million for services provided to the agencies by 86 consultants. OSC's objectives were to determine if OGS paid vendors: (i) at the appropriate hourly bill rates; (ii) for consultants with the required months of experience; and (iii) exclusively for hours worked.

OGS strenuously objects to OSC's unsubstantiated determination that OGS "may have paid inappropriate hourly bill rates because it does not have an effective process to ensure a candidate's qualifications meet the mandatory qualifications specified by the agency (e.g., months of experience)." As discussed below, these conclusory findings are without merit or factual basis. OSC has not identified a single instance where a candidate failed to meet the mandatory or requested requirements, and to suggest that OGS overpaid any vendor is, at best, speculative and, at worst, disingenuous.

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I. Background

In 2011, OGS issued a competitive Request for Proposal for a centralized contract to provide hourly-based information technology ("IT") services to Authorized Users, which include State executive agencies, State public authorities and public benefit corporations, and local government agencies. After evaluating the proposals, OGS awarded five-year contracts to 25 vendors commencing in November 2012 and expiring in October 2017 (collectively, the "Contract" or the "HBITS Contract").

The HBITS Contract presents a new and innovative approach to hiring consultant staff for IT projects. First, the Contract requires competition among the vendors to ensure that

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Authorized Users obtain the highest quality services at the best price. Second, it mandates transparency as the hourly rate for every job title and skill level is posted for each of the 25 HBITS contractors. Previously, when agencies contracted on their own for IT consultants, the hourly rates varied greatly from vendor to vendor. Finally, the HBITS Contract requires knowledge transfer from IT consultants to agency personnel for all engagements. This reduces agency dependency on temporary service contractors. Based on the past spending on IT consultants prior to the implementation of the HBITS Contract, OGS estimates that this Contract has resulted in statewide savings of approximately \$32 million annually.

II. The Consultant Identification Process

The HBITS Contract requires vendors to verify and stand behind their candidate's qualifications (Contract § 6.3.4) and provide a detailed description of how the candidate meets mandatory and requested qualifications (HBITS Form 2: Candidate Response Form). The HBITS Team screens Candidate Response Forms and rejects those that do not meet mandatory position requirements (Contract § 2.2.1).

The Contract also provides agencies with the right to validate candidate qualifications during the interview process and to reject unqualified candidates (Contract §§ 5.14 and 6.5.2.3; HBITS Forms 3A: Authorized User Preliminary Technical Evaluation Form and 3B: Authorized User Preliminary Technical Evaluation Form), to remove candidates who do not perform in accordance with the requirements of their positions (Contract § 6.5.3), and to rate the vendor on, among other things, whether the candidate's qualifications were validated by work performed under the Task Order (HBITS Form 4: Task Order Satisfaction Form).

When an Authorized User has a need for services under the Contract, the agency representative completes a Form 1 Task Order which is submitted to the OGS HBITS Team (the "Team").

Upon receipt of the Form 1 Task Order, the Team promptly begins a vetting process to identify qualified candidates for the Authorized User as follows:

1. Once the Team verifies that the Task Order contains the required information regarding the scope of work, job title, skill level, appropriate mandatory qualifications, and other information to ensure competition among vendors, the Team sends the Task Order to the vendors.
2. The vendors review their candidate pool to identify qualified candidates and are required to conduct a pre-interview to evaluate each candidate's qualifications and experience prior to submitting names to the Team for consideration.
3. Vendors submit a completed Form 2 to the Team, which contains all the information necessary to demonstrate that the proposed candidates meet the requirements of the Task Order.
4. The Team compiles and reviews all completed Form 2s to ensure that candidates meet the mandatory qualification and skill level requirements. The Team eliminates

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from consideration any candidate that does not meet at least half of the requested (i.e., non-mandatory) qualifications.

5. After completing this review, the Team performs the cost methodology analysis required under the Contract to rank qualified candidates by hourly rate. The list of qualified candidates ranked by hourly rate is then divided in half to separate the half with the lower hourly rates from the half with the higher hourly rates. The Team prepares a final list of candidates consisting of (i) those in the lower half by hourly rate and (ii) those whose hourly rate is within 3% of the highest passable hourly rate.
6. Based on the final list, the Team transmits to the Authorized User the Form 2s that meet the qualification and cost requirements.
7. The Authorized User reviews the Form 2s and scores and ranks the candidates based on their qualifications.
8. The Authorized User interviews candidates based on their ranking and determines which candidate should be hired. Because Authorized Users are the subject matter experts with respect to the work to be performed, OGS expects the Authorized User to verify the qualifications and experience of the candidates during the interview and selection process.

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III. OGS Response to the Report's Findings

In the Report, OSC notes that auditors "attempted to verify that 53 of the 86 consultants we examined . . . had the months of experience required to earn the hourly bill rates the vendors were paid. We could only verify that 22 of the 53 consultants (42 percent) had the necessary months of experience. For the remaining 31 consultants, we could not obtain sufficient appropriate evidence to verify their months of experience for various reasons"

As OGS discussed with OSC during the closing conference, verifying a candidate's work experience, particularly with prior employers, can be challenging and time-consuming. But as stated in the meetings between OSC and OGS during the audit, it is not unusual for small IT start ups to fold, merge, or be acquired in a short period of time. As such, unless a candidate has worked for a large, established IT firm, verifying employment and experience can be challenging.

Accordingly, OSC's inability to verify all of the consultants' work experience does not mean that: (i) OGS "**may** have paid inappropriate hourly bill rates because it does not have an effective process to ensure a candidate's qualifications meet the mandatory qualifications specified by the agency (e.g., months of experience)"; or (ii) "a material portion of the \$47 million paid to the seven vendors since the inception of the HBITS contracts **may** be inappropriate" and "a portion of the \$841,084 OGS paid for their work **may** have been inappropriate." [Emphasis added]. These conclusions are wholly unsupported and fail to recognize the numerous controls built into the Contract and the candidate onboarding

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process, as described in Section II above, which further the validation of candidate qualifications.

Furthermore, it is undisputed that OSC made no definitive finding that any consultant lacked the required months of experience necessary for the hourly rate paid. Second, OSC did not cite to a single instance where a candidate failed to meet the mandatory or requested requirements. Third, OSC failed to cite to a single instance where OGS overpaid a vendor.

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Finally, we note that OSC's finding that "OGS paid the highest or second highest hourly bill rate within the applicable job title for 28 of the 31 consultants" fails to take account of a cost-saving mechanism built into the HBITS Contract and consultant identification process. When vendors submit the qualifications and hourly rates of their candidates, the HBITS Team performs the initial review of the candidates and applies the Cost Methodology set forth in the Contract (see Section II (5) and (6) above), which eliminates the candidates with the highest hourly rate from further consideration.

IV. OGS Response to the Report's Recommendations

Recommendation #1

Ensure vendors obtain the information necessary to verify all candidates have the months of experience necessary to meet the mandatory qualifications specified by the agencies.

OGS Response: The HBITS Contract strongly emphasizes to the vendors that they are responsible for the truth and accuracy of claimed candidate qualifications when they choose to submit a candidate for consideration. While we believe that vendors generally undertake appropriate verification efforts, OGS will add language to Form 2: Candidate Response Form stating: "By submission of this Candidate, the Contractor has verified the previous employment of the Candidate and agrees that this information may be verified by the Managed Service Provider through randomly selected validation with the Contractor." This certification will further emphasize to vendors the importance of validating the candidate information prior to submission. In addition, OGS will perform random validations with the vendors as part of the annual evaluation (Contract § 6.4 Contractor Performance Criteria, Number 13). OGS will also require vendors to implement and provide a quality assurance plan.

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Recommendation #2

Ensure candidates have the months of experience necessary to earn the hourly bill rates the vendors are paid by OGS.

OGS Response: The HBITS Contract strongly emphasizes to the Authorized Users that they are responsible for validating the candidate's experience during the scoring and interviewing processes. Although OGS believes that agency efforts to verify candidate's experience have been sufficient, as an added measure of assurance, we will modify Form

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3B, "Authorized User Interview Evaluation Form" to include a box that the agency must check to confirm that the agency has undertaken diligent efforts to verify the consultant's number of months of experience prior to final selection of a candidate. This will serve as confirmation of a second verification of the experience by the agency.

V. Conclusion

While we disagree with the Report's findings that the current process for verifying candidates' experience is insufficient, OGS is committed to the continued success and cost savings of the HBITS Contract and appreciates the recommendations to further improve the verification process. The changes identified above will ensure that agencies are obtaining the best possible candidates. We will continue to look for ways to improve upon this process as we move through the remaining contract years.

If you have additional questions or comment please contact Theresa Bonneau at (518) 402-5846 or theresa.bonneau@ogs.ny.gov

Sincerely,



RoAnn M. Destito

cc: K. Tyler
B. Allen
K. Schultz
S. Filburn
S. Hume
T. Karius
T. Bonneau

State Comptroller's Office Comments on Auditee Response

1. Our determination that OGS may have overpaid HBITS vendors is based on material control weaknesses at HBITS vendors and OGS that resulted in an ineffective method to validate consultant candidates' stated months of experience. Because the contract links months of experience to a consultant's job title and hourly rate, it is critical to confirm qualifications. Depending on title, rates vary by as much as \$72.29 per hour based on months of experience and, therefore, OGS did not have reasonable assurance that it paid appropriate hourly rates.
2. The seven HBITS vendors that we interviewed, or their candidates, commonly transferred information from a candidate's resume to Form 2 without, or without consistently, independently verifying the validity of the information on the resume. Therefore, OGS officials used potentially unreliable information to conclude that candidates met the mandatory qualification and skill level requirements. Since most hourly bill rates are, in part, dependent upon months of experience, there is a risk that OGS may have paid for higher hourly bill rates than the candidates' experience warranted.
3. The contract requires OGS to validate that proposed candidates meet the mandatory qualifications, such as job titles and skill levels, specified by the agencies in their Task Order Request Forms. The hourly bill rates for all standard title consultants and most specialty title consultants are based in part on months of experience. During our examination period, OGS did not validate candidates' months of experience. Instead, OGS accepted as true information provided by HBITS vendors and candidates on Form 2s without ensuring their reliability. As our review found, the HBITS vendors did not, or did not consistently, verify candidates' months of experience.

Further, OGS explained in its response to our draft report that it expects agencies to verify the qualifications and experience of the candidates during the interview and selection process. However, the contract requires OGS to pass along to agencies only Form 2s that meet the mandatory position requirements. As such, requiring agencies to verify candidates' months experience would be duplicative and inefficient. It is critical that OGS, agencies, and HBITS vendors fulfill their contractual obligations to ensure OGS pays appropriate hourly rates based upon consultants' actual months of experience.

4. While OSC did not find a consultant who lacked the required months of experience, we were unable to validate 31 of the 58 consultants' months of experience. As a result, we cannot attest to whether these consultants meet the minimum months of experience required for the skill levels and hourly rates for which HBITS vendors billed the State. The material control weaknesses identified: (i) preclude OGS from attesting to the accuracy of

the months of experience on the 31 consultants' Form 2s; and (ii) increase the risk that OGS overpaid HBITS vendors for consultants who did not have the months of experience required by the contract. We identified multiple instances where OGS overpaid an HBITS vendor for issues unrelated to months of experience. We communicated these issues to OGS and the affected agencies separately as we considered them to be matters of lesser significance.

5. We combined Recommendation #1 and Recommendation #2 into one recommendation in the final report.