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Transmitted Via Email

The Honorable Thomas P. DiNapoli
New York State Comptroller
Office of the State Comptroller
110 State Street
Albany, NY 12236

Re: OSC Audit Report 2009-S-41

Dear Comptroller DiNapoli:

Attached are the Office for People With Developmental Disabilities' comments on the Office of the State Comptroller's Final Audit Report (No. 2009-S-41) entitled: "Contracts for Personal and Miscellaneous Services."

This response is being submitted to you in accordance with Section 170 of the Executive Law.

Sincerely,

Max E. Chmura
Acting Commissioner

MEC/mep
Attachment

Office For People With Developmental Disabilities (OPWDD)
Response to the Office of the State Comptroller's (OSC)
Final 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. Please be assured that OPWDD is committed to addressing and resolving all of the issues identified in this audit. As noted in our formal response below, we have taken appropriate corrective actions to address these issues. That being said, we still have concerns regarding the wording and tone of the final audit report, as the concerns we raised in our comments to the draft report did not effect any significant change to the final report in terms of tone, and perspective. We feel that the final audit report also inaccurately portrays OPWDD'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 OPWDD 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.

Of the 22 items sampled:

- 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 outsourcing 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. Finally, the statement that OPWDD has not performed any periodic reviews of the contracts and has only "...prepared annual reports listing its 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.

All of these items were discussed with the auditors throughout the audit process, but were not reflected in the final report. Please understand, we're not claiming that we did an appropriate review for every contract. There are definitely opportunities for improvement and we are currently reviewing our existing 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 audit report does not provide an accurate and balanced picture.

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 is in the process of reviewing, and revising 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.

As an initial step, updated guidance was issued by the Division's Acting Deputy Commissioner on 10/08/10 to all relevant OPWDD staff. In accordance with this new policy, evidence of proper approval and justification will be required before any procurement can proceed.

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 will help to identify opportunities. That being said, we believe the weakness identified in the audit report 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, OPWDD is in the process of reviewing, and revising 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.

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.