Ms. Sara Tullar Fasoldt  
Director  
NYS Division of Probation and Correctional Alternatives  
80 Wolf Road, Suite 501  
Albany, NY 12205  

Re: Alternatives to Incarceration Contract Management  
Report 2003-S-44  

Dear Ms. Fasoldt:

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, we audited the administration by the Division of Probation and Correctional Alternatives of its Alternatives to Incarceration contract with the New York City Office of Criminal Justice Coordinator. Our audit covered the period July 1, 2002 through June 30, 2003.

A. Background

The New York State Division of Probation and Correctional Alternatives (Division or DPCA) was established under Chapter 134 of the Laws of 1985. It exercises general supervision over the operation of local probation agencies throughout New York State (State). The Division’s mission is to promote and facilitate probation services and community corrections programs through funding and oversight. Division staff oversees 162 Alternative to Incarceration (ATI) programs across the State that offer a variety of services intended to reduce reliance on detention and incarceration, consistent with public safety.

Sections 261 and 265 of the Executive Law of New York State stipulate the amount of funds available to each locality for programs that offer alternatives to incarceration. The Division administers the State aid appropriated to fund local probation services that are operated by municipalities and private not-for-profit agencies whose ATI plans have been approved. These plans include community-based programs designed to reduce the frequency and/or duration of incarceration and thus advance public safety and offer private alternatives to incarceration that are acceptable to both the community and the criminal justice system. Program funds can also be used for providing services to offenders who have a history of alcohol or substance abuse.

The Division distributes approximately $22 million annually for ATI programs. However, the State is prohibited from contributing more than 50 percent of the total...
contractual cost for service providers. In New York City (City), the Office of Criminal Justice Coordinator (OCJC) contracts with service providers and pays them with City funds for both the State and City portions of reimbursable expenses. OCJC becomes eligible for Division reimbursement through the annual ATI Service Plan application approval process established for the OCJC contracts. Approval of the Service Plan means that the Division agrees with the performance targets contained in the contracts and will reimburse the City for a portion of its costs. OCJC submits claims to the Division, which reviews and approves them before reimbursing OCJC. The Division relies on OCJC to monitor the propriety of payments to the service providers. For the fiscal year that ended on June 30, 2003, the total value of the State portion of the contracts was $2.8 million, representing approximately 29 percent of the total cost to the City.

For the period July 1, 2002 through June 30, 2003, OCJC contracted with five service providers to administer eight ATI programs addressing the behavior of misdemeanor or felony defendants. The value of these contracts was $10.2 million. Each service provider is expected to comply with the performance milestones set forth in Part I of its contract with the City. Division and OCJC payments to providers are “performance based”, that is, providers receive payment only when participants reach or complete multiple milestones that have been established for each ATI program. To achieve a milestone, the participant must satisfy a specific requirement, such as a minimum rate of attendance and/or toxicology testing.

B. Audit Scope, Objectives, and Methodology

We audited selected billings made by three service providers for the period July 1, 2002 through June 30, 2003: Center for Alternative Sentencing and Employment Services (CASES); Fortune Society (Fortune); and Edwin Gould Services for Children and Families, Inc. Fortune operates three different programs: DAMAS, Flametree, and Freedom. CASES administers two programs: Court Employment Program (CEP) and the Community Service Sentencing Project (CSSP). Edwin Gould Services for Children and Families, Inc., administers one ATI program: STEPS to End Family Violence (STEPS). These contractors operate other ATI programs, including those funded in part through the Service Plans approved by the Division.

The objectives of our performance audit were to determine whether the internal controls related to the payments for probation services and community corrections programs provided reasonable assurance that the payments were accurate and properly supported, and whether Division officials effectively oversee the ATI services the City provides through its subcontractors. To accomplish our objectives, we interviewed officials from the Division, OCJC, and all three service providers and reviewed written ATI policies and procedures described in the contracts.

We reviewed documentation for payment at three service providers. We selected the three service providers based on the relative dollar value of their contracts (small, medium, and large). Selecting the most-recent three quarters of the fiscal year that ended on June 30, 2003, we assigned each provider a different quarter to be reviewed: STEPS for the second quarter, Fortune for the third quarter, and CASES for the fourth quarter. The population of ATI participants for all 3 quarters was 1,071. We examined a total sample of 122 participants, selected randomly from each quarter selected: 69 representing
Fortune, 42 representing CASES, and 11 representing STEPS. We also reviewed data in
electronic databases maintained by CASES and Fortune, searching for duplicate names
and payments. Because STEPS maintained only paper files, we did not perform a search
for duplicate names or payments at this provider.

We conducted our audit in accordance with generally accepted government
auditing standards. Such standards require that we plan and perform our audit to
adequately assess those operations which are included in our audit scope. Further, these
standards require that we understand the Division’s internal control structure and its
compliance with those laws, rules and regulations that are relevant to the operations
included in our audit scope. An audit includes examining, on a test basis, evidence
supporting transactions recorded in the accounting and operating records and applying
such other auditing procedures as we consider necessary in the circumstances. An audit
also includes assessing the estimates, judgments, and decisions made by management.
We believe that our audit provides a reasonable basis for our findings, conclusions and
recommendations.

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, several of which are performed by the Division of State Services. These include
operating the State’s accounting system; preparing the State’s financial statements; and
providing 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 management functions do not affect
our ability to conduct independent audits of program performance.

C. Results of Audit

While we noted that OCJC and the providers we visited had generally complied
with the Division and OCJC contract requirements by maintaining prescribed
documentation that would support the services they provided to participants, we found
opportunities for improvement in controls relating to duplicate billings and payments for
services not provided. Of the 122 participants for whom records were available, we
found no problems for 121 and an overpayment for one. In addition to our sampled
cases, from the databases maintained by Fortune’s Freedom program and CASES’ CEP
program we identified two participant cases that each had a billing error. For these three
cases, we found that two of the three service providers had been overpaid $18,269. The
third provider did not receive an overpayment.

1. Accuracy of Milestone Payments

The milestones and reimbursement rates for the three providers are listed
in the following table:
Service Provider/
ATI Program | Milestone and Reimbursement Rates
(Rounded to the nearest dollar)

<table>
<thead>
<tr>
<th>CASES:</th>
<th>Intake</th>
<th>30-Day</th>
<th>135-Day</th>
<th>Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>CEP</td>
<td>$1,320</td>
<td>$978</td>
<td>$4,888</td>
<td>$7,787</td>
</tr>
<tr>
<td>CSSP</td>
<td>$941</td>
<td>N/A</td>
<td>N/A</td>
<td>$2,314</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FORTUNE:</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>DAMAS</td>
<td>$1,244</td>
<td>$982</td>
<td>$4,477</td>
<td>$7,106</td>
</tr>
<tr>
<td>FLAMETREE</td>
<td>$1,244</td>
<td>$1,268</td>
<td>$5,105</td>
<td>$9,238</td>
</tr>
<tr>
<td>FREEDOM</td>
<td>$1,244</td>
<td>$975</td>
<td>$4,522</td>
<td>$7,106</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STEPS:</th>
<th>Intake</th>
<th>30-Day</th>
<th>5-Month</th>
<th>Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>TRACK I</td>
<td>$767</td>
<td>$1,535</td>
<td>$1,023</td>
<td>$2,729</td>
</tr>
<tr>
<td>TRACK II</td>
<td></td>
<td>$3,349</td>
<td>$4,605</td>
<td></td>
</tr>
</tbody>
</table>

a. Fortune

A participant is deemed to have completed the program successfully when he/she has made significant progress, during a six-month stay, toward accomplishing the goals of his/her treatment plan and has met the mandated court requirements, including clinically-appropriate transfers to other treatment programs. However, even though one of Fortune’s participants had been transferred to the Osborne Association ATI program on October 15, 2002, after being in the Flametree program for just two months, Fortune had billed for him in February 2003 as a participant completing the program. In this instance, the case manager's summary progress note indicated that the “... client was involved in an incident at the program that led to another client being discharged and the client being transferred ... to another provider.” As a result, Fortune was no longer responsible for monitoring this participant while he was at the other ATI facility. The director of the Flametree program agreed with us that Fortune was in error when it reported and billed OCJC for $9,238 for this participant in February 2003.

Division officials said they would recover the inappropriate payments by adjusting the amount of future reimbursements made to the City. OCJC officials argued that Fortune should not have to repay money in this case because Flametree had exceeded the contractually-required number of completions with respect to other participants and was never compensated for its additional achievement. We continue to believe the billing was in error because the participant had only been in the program for two months and there is no evidence that the participant had received any further post-discharge monitoring services from Fortune. In addition, since a replacement clause is not stipulated in the contract, Fortune could not replace this participant's name with the name of another participant.

Another case file for a Freedom participant lacked both the required final treatment plan and final court report. As a result, we were unable to confirm that the participant had completed the program successfully. Although the case file had been reviewed by the caseworker's supervisor, and the missing items were noted in the front of the file, no additional steps were taken to obtain these missing documents. Subsequently,
OCJC explained that the treatment plan we had seen in the file was marked incorrectly as a preliminary plan, and should have been marked by the provider as the 90-day treatment plan.

b. CASES

CASES operates the CEP, an intensive-supervision ATI program for pre-trial defendants who are primarily 19 years of age or younger and would otherwise be detained pretrial or sentenced to incarceration. CASES’ other program, CSSP, entails services for adult offenders who would be likely to receive a short jail term if they did not receive a community service sentence. Our sample of 42 participants revealed no exceptions in CASES’ operations.

c. Edwin Gould Services for Children, Inc.

STEPS runs ATI programs serving women defendants who would otherwise be incarcerated pre-trial or sentenced to jail or prison. Its programs, Track I and Track II, have different milestones. Under Track I, services are provided to women who have been the victims of physical and/or psychological abuse, have been charged with a felony, and are being held in pre-trial custody at the City’s Department of Correction. Under Track II, pre-trial releases are obtained for women (including pre-disposition women who are incarcerated temporarily at Rikers Island) and services are provided to them during a 6 to 12-month period. Our review of 11 sample STEPS participants revealed no exceptions.

2. Data Verification for Billing Errors

Our audit identified two billing errors, one by Fortune’s Freedom program and another by CASES’ CEP.

a. Fortune

Fortune incorrectly billed OCJC twice for a participant in the Freedom ATI program who had been discharged from the program on August 1, 2002, and returned to the program on August 28, 2002. According to Fortune’s re-intake and reinstatement policy regarding absences lasting for periods shorter than 30 days, the participant should be considered a reinstated participant and should not have been claimed as a new enrollee. As a result, OCJC overpaid Fortune $1,244.

OCJC officials pointed out that Fortune claimed to have an additional eight participants in the Freedom program for which it did not claim reimbursement. They contended that OCJC should not have to make restitution for this case because reimbursement for the additional participants should offset the error in invoicing for this participant. However, since a replacement clause is not stipulated in the contract, Fortune could not replace this participant’s name with the name of another participant.
b. CASES

The service provider can be reimbursed only after each participant achieves the ATI program milestones. To document these achievements, the service provider is expected to attach the names of successful participants to the invoice it sends to OCJC for payment. Providers should also place documentation in the participant’s case file. For the 2002-03 fiscal year, CASES reported to OCJC that 121 participants in its CEP program had completed the requirements successfully. However, CASES erroneously reported that one of these participants had completed the program successfully, even though the participant had been terminated in October 2002 and had been transferred to another provider's program after spending just 45 days enrolled in the CASES program. As a result of this error, CASES overbilled OCJC $7,787. CASES officials agreed that the billing was made in error. OCJC contended that CASES should not have to repay the questioned cost since it does not constitute a material portion of the contract amount.

**Recommendation**

*Work with OCJC to jointly recover payments totaling $10,482 from Fortune, and the payment of $7,787 from CASES.*

We provided a draft copy of this report to Division and OCJC officials. Their comments have been considered in preparing this report. Division officials agreed with our recommendation. The Division’s response is included as Appendix A.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Director of the Division of Probation and Correctional Alternatives 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.

Major contributors to this report were Richard Sturm, Christine Chu, Roseline David, Legendre Ambrose, Jeremy Mack, Jean Estime, and Marticia Madory.

We wish to thank the management and staff of the New York State Division of Probation and Correctional Alternatives and the New York City Office of Criminal Justice Coordinator for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

William P. Challice
Audit Director

cc:  Martin Becker (OCJC)
     Howard Bancroft (DPCA)
     Ben Conboy (Division of Criminal Justice Services)
     Robert Barnes (Division of Budget)
July 21, 2004

Mr. William P. Challice, Audit Director
Office of the State Comptroller
Division of State Services, State Audit Bureau
123 William Street – 21st Floor
New York, NY 10038

Re: Alternatives to Incarceration Contract Management Report 2003-S-44

Dear Mr. Challice:

This letter is in response to the Audit Report 2003-S-44 concerning the Division of Probation and Correctional Alternatives’ management of its alternatives to incarceration contracts with the City of New York for the period July 1, 2002 to June 30, 2003. The Division concurs with the findings and recommendations contained in this report.

The audit identified a total of $18,269 in overpayments to two contracted service providers. These payments were made by the New York City Office of Criminal Justice Coordinator to the service providers. For the period of this report the Division reimbursed New York City for its contractual expenditures at a rate of 31.43%. The Division will recoup $5,741.95 that resulted from the identified overpayments from future reimbursement claims.

The Division will continue its ongoing activities to improve its monitoring activities of the New York City ATI contract. The results of this audit have reassured the Division of its confidence in the Coordinator’s Office management and administration of these contracts and that the Division’s reimbursement of approximately $3.2 million to the City of New York was appropriate.

Sincerely,

[Signature]
Sara Tullar Fasoldt
State Director

Cc: Martin Becker, NYC Office of Criminal Justice Coordinator
    Robert Barnes, Division of Budget
    Don Capone, Division of Budget
    Ben Conboy, DCJS
    Howard Bancroft, DPCA