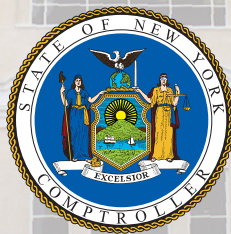




New York State Department of Correctional Services

Contracts for Personal and Miscellaneous Services

Report 2009-S-67



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

September 23, 2010

Mr. Brian Fischer
Commissioner
NYS Department of Correctional Services
Building 2
1220 Washington Avenue
Albany, NY 12226-2050

Dear Mr. Fischer:

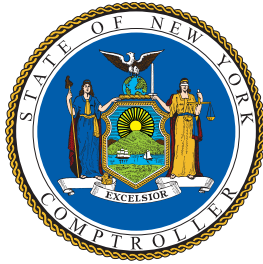
The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees 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*. This audit was performed pursuant to the State Comptroller's authority under 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 Department of Correctional Services (Department) justified the need to contract for personal and miscellaneous services. Another objective was to determine whether the Department periodically reassessed personal and miscellaneous service 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 years 2008-09. On October 15, 2009, the Governor also ordered State agencies to reduce their fiscal year 2009-10 operating budgets by another 11 percent. According to Division of the Budget officials, the Department was allowed to reduce its 2008-09 spending reduction target to 3.5 percent (\$84.1 million) to ensure the health and safety of its staff and inmates.

For the period April 1, 2006 through October 5, 2009, the Department had 241 State-funded Service Contracts valued at \$563.9 million. We reviewed a sample of 21 Service Contracts valued at \$138.6 million and found the Department did not maintain sufficient documentation to justify the need for 9 of the 21 contracts totaling \$7.5 million. Officials informed us these contracts were necessary based on their experience and knowledge of the specific activities involved. However, even in cases where contracts cannot be eliminated, the Department may be able to reduce the scope of work to achieve savings. We believe that supporting documentation is necessary to adequately establish that the Department has reached the correct conclusions about the need for contractual services and the extent of opportunity for reducing contract scope to achieve savings.

Department officials reported that they exceeded their \$84.1 million budget reduction target for 2008-09 by saving approximately \$183 million, including \$12.8 million from Service Contracts. Furthermore, the Department projected total savings of \$20.7 million for fiscal years 2009-2010 and 2010-11. However, none of these savings estimates were supported with

documentations and analysis. In addition, the reductions in Service Contracts were not based on examination of all types of service contracts and instead focused only on specific types of contracts (i.e., technology, inmate services and radio services). Accordingly the reported \$12.8 million of savings from Service Contracts represented only about 8 percent of the total average expenditure (\$155.5 million) on Service Contracts. Since actual and projected savings were not supported with documentation and not all Service Contracts were examined, we question the reliability of Department savings estimates.

Our report contains three recommendations to improve the Department's use of Service Contracts. Officials generally agreed with our recommendations and have taken steps to implement changes.

This report, dated September 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

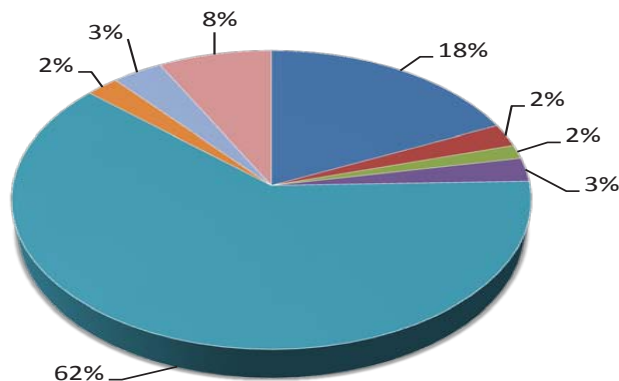
Background

The Department of Correctional Services (Department) is responsible for the confinement and habilitation of inmates in 68 State correctional facilities. As of December 31, 2009, there were approximately 59,000 inmates.

The Department provides appropriate medical care as well as various programs and services to help inmates successfully return to their communities. Programs include educational and vocational training, substance abuse treatment, parenting skills, anger management, domestic violence counseling, health education, sex offender treatment, and religious services. To help support correctional facilities and administer these programs, the Department enters into personal and miscellaneous service contracts (Service Contracts).

From April 1, 2006 through October 5, 2009, the Department had 241 State-funded active Service Contracts (excluding construction and commodities) with a total value of more than \$563.9 million. The Department reported it spent an average of \$155.5 million per year for Service Contracts during the three fiscal years ended March 31, 2009 as shown by category of contract in the following table.

Contracts Awarded
(in Millions and % of Total)



Facility Operations (\$102.1 million)	Information Technology (\$13.5million)
Inmate Programs (\$8.4 million)	Maintenance (\$14.4 million)
Medical (\$349.7 million)	Other (\$12.7 million)
Security (\$19.5 million)	Transportation (\$43.7 million)

The following directives issued from the New York State Division of the Budget and the Governor set forth the expectations for State agencies to make sure that expenditures, including Service Contracts, are justified and 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 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 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 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 services 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 and non-personal service reductions so as

to not disproportionately impact either, and to ensure recurring savings in both categories. On October 15, 2009, the Governor also ordered State agencies to reduce their fiscal year 2009-10 and 2010-11 operating budgets by another 11 percent.

Audit Scope and Methodology

We audited whether the Department justified the need to contract for personal and miscellaneous services. Another objective was to determine whether the Department periodically reassessed personal and miscellaneous service contracts to identify what work could be deferred, eliminated or reduced to save State funds. For purposes of our audit, Service Contracts are those in which the majority of the costs associated with the contracts are for services and labor. We did not include contracts for commodities or capital constructions. Our audit period was April 1, 2006 through December 31, 2009.

To achieve our objectives, we interviewed Department personnel, reviewed contracts, and other supporting documentation provided by the Department. We also reviewed State laws, EO 6 and Budget Bulletins. We selected a judgmental sample of 21 Service Contracts totaling \$138.6 million from the 241 active contracts during our audit period. We selected our sample from contracts over \$50,000. The selection includes contracts for medical services, transportation, inmate programs, facility operations, maintenance, and security services. We selected these areas because each had Service Contracts with large unspent balances and had the best potential for cost savings without effecting Department safety and security.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those 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 Department officials for their review and comment. Their comments were considered in preparing this final audit 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 New York State Department of Correctional Services 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 why.

**Contributors to
the Report**

Major contributors to this report include Carmen Maldonado, Steve Goss, Mark Ren, Brandon Ogden, Raymond Barnes, Jeff Dormond, Michaela Siegel, Taryn Davila-Webster, and Sue Gold.

Audit Findings and Recommendations

Justification of Service Contracts

We selected a sample of 21 Service Contracts totaling \$138.6 million and reviewed available documentation to determine whether the need for the services and the decision to contract for services were justified with supporting documentation. We found that the Department did not maintain sufficient documentation to justify the need for services for 9 of the 21 contracts totaling \$7.5 million as follows:

- Seven contracts were to transport the families of inmates to facilities for visits. This service was once funded with revenue from premiums charged on inmate phone calls. However, since April 2007, the Department has not received these premiums. The Department has not researched the possibility of having the inmates' families bear some or all of the cost for transportation.
- One contract was for rights to show movies to inmates. This is in addition to the cable television offered to inmates.
- One contract was for security at the Department's New York City administrative offices.

The Department did not document what information was considered and the rationale for their decisions for each of these Service Contracts. Nor, did the Department maintain an explicit analysis that supports the scope of services provided by these contracts. In the absence of such information, we question whether the nine Service Contracts addressed critical needs and involved essential services at an appropriate level.

Department officials replied to our preliminary findings that they decided these contracts were justified based on their experience and knowledge of the specific activities involved. They also stated that certain functions could not be performed by Department staff because of their lack of expertise.

For example, Department officials told us that they need to contract out for security to guard the Department's New York City administrative building because correction officers are only responsible for the security of inmates. However, in Albany, correction officers are also responsible for securing access to the Department's headquarters' building. The Department could not provide any documentation justifying the contract staffing levels and amounts for the New York City administrative building were appropriate and needed.

While there are times when outside consultants need to be hired even in these cases, a documented analysis is important to fully support that the Department's conclusions and specific requirements are correct and that the opportunities and options for cost savings have been fully considered.

Recommendation 1. Executive management should communicate to appropriate staff the requirement to support Service Contracts with written justification of the need for the service, the appropriate levels of service, and the need to contract out.

Reassessment of Service Contracts Based upon our review of the Department's efforts to scrutinize Service Contract spending, we believe additional savings opportunities may be possible. During the three years ended March 31, 2009, the Department spent an average of \$155.5 million annually through Service Contracts. Due to special concerns about the health and safety of both staff and inmates, the Division of the Budget granted the Department a partial exemption from the 10.35 percent savings target imposed on most agencies during the 2008 budget reduction effort. Instead, the Department was only required to immediately reduce spending by 3.5 percent (\$84.1 million) and was to work toward implementing additional savings actions to achieve a portion of its remaining target. In response, Department officials reported plans to reduce spending by \$183 million, or 7.6 percent.

We reviewed the Department's savings plans and found Service Contracts contributed \$12.8 million to the Department's 2008-09 effort, which equates to about 8.2 percent of its annual Service Contract spending. About half of these planned savings (\$5.6 million) was slated to come from technology-oriented contracts. The balance of the projected savings was expected to come from six other specific contracts covering certain inmate programs, training and communication services. However, the Department did not have documentation and analysis that support actual and projected savings or consideration of all appropriate Service Contracts when making savings determinations. Such documentation and analysis is essential to ensure that management has identified all opportunities where the scope of contract work may be deferred, eliminated or reduced to generate cost savings.

We found the Department's combined 2009-10 and 2010-11 spending plans project \$20.7 million of savings to be achieved from the same group of Service Contracts identified for the 2008-09 budget reductions, although the Department was similarly unable to demonstrate precisely how these recurring savings were determined. After our fieldwork concluded, the Governor again called for agencies to reduce spending in future fiscal years; this time by 11 percent. Even if the Department

were only able to reduce its annual Service Contract spending by a level equivalent to this 11 percent goal, we estimate it could increase annual savings by about \$6.7 million.

Department officials indicated that they do monitor spending on a monthly basis, but do not periodically review each Service Contract to identify savings. Instead, when instructed to make spending cuts such as the Governor's 11 percent target, managers propose which contracts can be cut based upon their experience and knowledge of the specific activities involved. However, given the State's fiscal crisis, the Department needs to document its reassessment of all Service Contract spending. If officials conduct a top-to-bottom review of every current and planned contract, it is likely they will find some other services that could be reduced to achieve savings.

The Department is required to adhere to EO 6 and report to the Task Force all Qualified Personal Service Contracts it entered into and list these contracts on its website. The Department did not report any of its Qualified Personal Service Contracts to the Task Force or list these contracts on its website, as required by EO 6. We identified three contracts totaling more than \$71 million that should have been reported to the Task Force and posted to the Department's website:

- A five-year contract valued at \$54.4 million with a provider of inmate medical services;
- A two-year contract for \$11.8 million for transporting inmates; and
- A five-year contract for \$5.5 million for psychologically screening correctional officers.

- Recommendations**
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.
 3. Assign specific Department staff to review all contracts to determine which contracts meet EO 6 reporting requirements and comply with EO 6.

Agency Comments



BRIAN FISCHER
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS – BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

August 20, 2010

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street, 21st Floor
New York, NY 10028

RE: Draft Audit Report 2009-S-67:
Department of Correctional Services'
*Contracts for Personal and
Miscellaneous Service Contracts.*

Dear Ms. Maldonado:

In accordance with Section 170 of the Executive Law and in response to your correspondence of July 23, 2010, attached is the Department's reply to the Draft Audit Report 2009-S-67: Department of Correctional Services' *Contracts for Personal and Miscellaneous Service Contracts*.

DOCS would like to acknowledge the time and effort of all employees that were involved with this audit and their desire to improve the Department's operation.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Fischer".

Brian Fischer
Commissioner

Attachment



BRIAN FISCHER
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS – BUILDING #2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

GAYLE HAPONIK
DEPUTY COMMISSIONER
ADMINISTRATIVE SERVICES

August 20, 2010

Ms. Carmen Maldonado
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, NY 10038

Re: Draft Audit Report 2009 – S – 67, Department of
Correctional Services' *Contracts for Personal and
Miscellaneous Service Contracts*.

Dear Mr. Maldonado:

We have reviewed the draft audit report on *Contracts for Personal and Miscellaneous Service Contracts* and generally agree with the three recommendations. However, we do not agree with your audit findings that 9 of the 21 contracts appeared not to be necessary.

In response to the seven transportation contracts, visiting by family members has a positive impact on both facility operations and public safety. The maintenance of family ties and the support of families to the inmates has a calming affect on the inmates. Inmates look forward to receiving visits from parents, children and significant others. Many family members encourage the inmate to participate in programs and to remain discipline free so the inmate can come home. The family members are motivators for the inmate to use their time productively which assists in the orderly operation of the facility. The key to public safety is the inmate having a smooth reentry to the community and once in the community, exhibiting a crime-free life. Research has shown that where there is a family support system, a place to live and positive influences from the family, the inmate has a greater chance of returning to the community and maintaining a crime-free life. Many of the families who visit via the "free bus" do not have the financial means to visit otherwise. The facilities are located long distances from where the families live, up to five hundred miles from New York City. Most facilities are located in rural areas without public transportation. Many of the family members do not have personal transportation and the "free bus" is the only way they would be able to visit. These transportation contracts do provide a service which has a beneficial impact on facility operations and public safety. The Department of Correctional Services (DOCS) has provided transportation for families to visit inmates for many years. Since April of 2007, these contracts have been paid for by State Purpose funds rather than from premiums received from the inmate call home program.

In response to the contract which provides the rights to show movies, the use of movies has a number of positive results within the facility. Since our facilities are considered a "public viewing audience," there is a contracted fee that must be provided to the vendor. There are positive outcomes

from the movie program. First, movies become a behavioral incentive for the inmate population. Due to misbehavior, an inmate can lose recreation, which includes viewing the movie. Second, when a movie is being shown, a large number of inmates are occupied and the facility population is quiet. Third, movies are usually a reflection of current cultural and societal trends. The viewing of movies provides the inmate with information which will assist in his or her reentry. Finally, as part of reentry, learning the positive use of leisure time is critical. Movie viewing is a positive use of leisure time.

In response to the contract for security at the Department's Long Island City location, there is a need for 24 hour security at this facility, 365 days a year. The Long Island City facility serves many functions: storage of confidential investigative files, police vehicles, radios, firearms, chemical agents, seized property, administrative and criminal evidence to list a few. The facility is also utilized as a command post for department related emergencies to include escapes and absconder related criminal activities, including shootings, robberies and other major criminal activities as well as working with New York City law enforcement agencies on significant criminal investigations. The security contract is the most cost effective manner in which to maintain this critical resource to the Department. It should be noted that the Department's Division of Budget and Finance had done a cost analysis that clearly identifies the savings through this contract, as opposed to uniformed correction staff. The cost analysis demonstrated a \$240,000 per year savings by using the security contract which was presented to OSC during this audit.

*
Comment

In addition, some of the statements made in the *Audit Results – Summary and Introduction* may be out of context with the actual expenditures and the contract controls that apply, and some of the preliminary responses the Department provided are not reflected or are partially portrayed in this draft report. However, the main point of the audit is the lack of a defined contract review process and the documentation of how management reviews the initial and continued need for contracts. Therefore, the accuracy of contract amounts or the exclusion of some of the Department's preliminary comments does not alter that there are weaknesses in our contract process the Department needs to address.

Internal Control Weakness: The Department did not document what information was considered and the rationale for their decisions for each of these Service Contracts. Nor, did the Department maintain an explicit analysis that supports the scope of services provided by these contracts. The Department is required to adhere to Executive Order (EO) 6 and report to the Task Force all Qualified Personal Service Contracts it entered into and list these contracts on its website. The Department did not report any of its Qualified Personal Service Contracts to the Task Force or list these contracts on its website, as required by EO 6.

Recommendation #1: Executive management should communicate to appropriate staff the requirement to support Service Contracts with written justification of the need for the service, the appropriate levels of service, and the need to contract out.

Response: The Department agrees. Executive management will communicate to appropriate staff that Service Contracts require written justification of the need for the service, the appropriate level of service, and the need to contract out.

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.

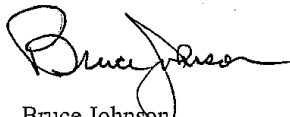
* See State Comptroller's Comment, page 20.

Response: The Department agrees. Executive management will require managers to periodically reassess all Service Contracts and to document their determinations. Procedures and Directives are being reviewed to incorporate steps to provide for a formal, periodic review.

Recommendation #3: Assign specific Department staff to review all contracts to determine which contracts meet EO 6 reporting requirements and comply with EO 6.

Response: The Department agrees. The Department has begun preparing Qualified Personal Service Contracts (QPSC) Agency Reporting Forms. In addition, we have initiated a review of all Service Contracts that may generate expenditures in excess of \$1 million in any annual period to determine whether they qualify under QPSC standards. We are in the process of including this information on the Department's website.

Sincerely,



Bruce Johnson
Chief Fiscal Officer

cc: Gayle Haponik, Deputy Commissioner
Osbourne McKay, Deputy Commissioner
Peter Berezny, Director of Internal Controls

*** State Comptroller's Comment**

The analysis provided by the Department was not prepared when the decision was made to contract for the security services. Instead it was prepared for the auditors, and even now did not consider any factors such as reassignment of COs from facilities that were closed. In addition, the cost analysis compares the cost of the contract which provides 6,760 hours of service to 8,760 hours if provided by the Department. This is an additional 2,000 hours.