



New York State Division of Human Rights

Contracts for Personal and Miscellaneous Services

Report 2009-S-83



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

November 10, 2010

Mr. Galen D. Kirkland
Commissioner
New York State Division of Human Rights
One Fordham Plaza, 4th Floor
Bronx, New York 10458

Dear Mr. Kirkland:

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*

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State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objectives

One objective of our audit was to determine whether the Division of Human Rights (DHR) justified its need to contract out for personal and miscellaneous services. Another objective was to determine whether DHR 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 address 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 taken on 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. On October 6, 2009, the Governor again called for further reductions of 11 percent for 2009-10. For the period April 1, 2006 through March 31, 2009, DHR had five active State-funded Service Contracts valued at \$2.32 million.

We found that DHR did not justify its need to award Service Contracts. For example, we reviewed four of the Service Contracts DHR had in place during our audit period, valued at \$2.29 million, and found that no documentation was available to justify the need for any of the contracted services. We believe that supporting documentation is necessary to adequately establish that DHR has reached the correct conclusions about the need for its contracted services. We recommend that going forward DHR officials communicate to their staff the requirement to support their Service contracts with written justification.

While we found that DHR had cancelled one of its Service Contracts, with an unspent balance of \$153,000, it did not provide us with documentation to support that it did so based on a process that regularly reassessed all of its Service Contracts. Without such a process, DHR may have missed opportunities to further reduce cost and save State funds.

Our report contains two recommendations for improving DHR's efforts to attain savings through justification and reassessment of Service Contracts. DHR officials generally agreed with our conclusions and recommendations.

This report, dated November 10, 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 State Commission Against Discrimination was created in 1945 to enforce the State's civil rights laws. In 1968 the Commission was renamed the Division of Human Rights (Division). The Division is responsible for ensuring that New Yorkers have equal opportunity in employment, housing, public accommodation, credit, and education. It also serves as an alternative to the court system for resolving claims of discrimination. The Division's Central Office is located in the Bronx. It has 13 offices throughout the State and is budgeted for 206 full time employees.

DHR had five active Service Contracts with a total value of \$2.32 million during the period April 1, 2006 through March 31, 2009. These contracts were for information technology, advertising, training, and other services. All five of these contracts ended during this period.

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 September 2009.
- State Budget Bulletin B-1178, which became effective April 21, 2008, requires agency management to scrutinize all of their 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, agencies are required to scrutinize spending for contractual services among several other items. Agencies are further required to develop plans that include a framework for continuing fiscal year 2008-09 savings through fiscal year 2011-12.
- State Budget Bulletin B-1183, which became effective August 21, 2008, requires State agencies to review all of their 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 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, as of 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 DHR justified its need to contract out for personal and miscellaneous services (Service Contracts). Another objective was to determine whether DHR had 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. We did not include contracts for commodities or capital construction. Our audit period was from April 1, 2006 through June 15, 2010.

To achieve our objectives, we interviewed DHR personnel, and reviewed contracts and other supporting documentation provided by DHR. We also reviewed relevant State laws, the Order, and Budget Bulletins. We reviewed the four Service Contracts with a total award value of \$50,000 or more that were in effect during our audit period, and reviewed the records relating to those contracts. The total award value of the four contracts was \$2.29 million. The four contracts were for information technology, advertising and training services.

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 during our audit 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 DHR officials for their review and comments. Their comments were considered in preparing this final report and are attached in their entirety at the end of the report.

DHR officials agree with our conclusions and report that they have begun actions to implement our recommendations.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Division of Human Rights 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 were Frank Patone, Michael Solomon, Santo Rendon, and Peter Blanchett.

Audit Findings and Recommendations

Justification of Service Contracts

We reviewed the available documentation for DHR's four Service Contracts with a value of \$50,000 or more that were in effect during our audit period to determine whether the need for the services and the decision to contract out was justified with supporting documentation. These four Service Contracts totaled \$2.29 million. We found that in no instance was DHR able to demonstrate that it had formally evaluated and justified the need for these contracts. These contracts involved information technology, advertising and training services. DHR officials agreed with our conclusions.

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 DHR's conclusions are correct and that opportunities and options for cost savings have been fully considered.

Reassessment of Service Contracts

Based upon our review of DHR's efforts to scrutinize Service Contract spending, we believe additional savings opportunities may have been possible. We found that DHR had not performed the periodic reviews required by the Division of the Budget (DOB), nor had it performed a comprehensive assessment of existing Service Contracts to prioritize their importance or to determine whether any can be deferred, eliminated or reduced. While DHR had cancelled one contract for training services with an unspent balance of \$153,000, it has not established procedures for a regular and systematic review of its Service Contracts. DHR did not have documentation demonstrating that it had reviewed and evaluated all of its Service Contracts, both current and planned. Such 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.

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



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DIVISION OF HUMAN RIGHTS
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DAVID A. PATERSON
GOVERNOR

GALEN D. KIRKLAND
COMMISSIONER

October 15, 2010

Mr. Frank Patone
Audit Director
Office of the State Comptroller
Division of State Government Accountability
State of New York
123 William Street
21st Floor
New York, NY 10038-0001

Re: OSC Draft Report 2009-S-83: New York State Division of
Human Rights (DHR): Contracts for Personal and Miscellaneous
Services

Dear Mr. Patone:

Thank you for your recent letter and draft report regarding the
OSC's audit of selected contracts of the Division's personal and
miscellaneous services for the period: April 1, 2006 to March
31, 2009.

There were four (4) contracts selected for review by the audit
team. These contracts were for information technology,
advertising and training services provided to DHR for specific
programs. The contract expenditures totaled approximately \$ 2.2
million, which span three (3) fiscal years - SFY 2006-2007; SFY
2007-2008; SFY 2008-2009.

The OSC audit team met with the Division's finance staff
who provided the auditors with all relevant information from
the DHR finance office files and materials that were available.

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The name of the organizations that the Division entered into service contracts, the contract beginning term date and amount of contracts expenditures, are listed below:

<u>Organization</u>	<u>Contract term</u>	<u>Expenditure Amount</u>
-HELP Social Service Corp.	10/15/2007 to 1/14/2009	\$ 33,076
-National Urban Fellows	1/10/2006 to 12/31/2006	\$ 24,908
-Law Manager, Inc.	8/1/2006 to 4/30/2007*	\$ 1,809,338
-The Advertising Council	11/1/2005 to 12/31/2007	\$ 350,948
TOTAL		\$ <u>2,218,270</u>

*Note:

The original contract term with Law Manager, Inc. to design, develop and implement the Case Management System was 2/1/2002 to 1/31/2007.

As the chart above indicates, these four contracts were entered into, and service begun, during a time period prior to the current DHR administration's assuming office in May of 2008. It should be noted that the current DHR administration had concerns about the contract with the HELP Social Service Corporation, and subsequently cancelled the contract in June of 2008 and paid HELP in January 2009 for services that had been previously rendered.

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These contracts ended before the current Division senior finance management team assumed their responsibilities and began an implementation of a series of measures during 2008-2009 to improve fiscal accountability and the overall management of the Division's financial operations. These efforts continue to take place during a period of continued budget reductions and organizational downsizing.

The Division shares the concerns noted by the OSC audit team that proposed service contracts require complete documentation and periodic assessment to identify potential savings; with respect to the two recommendations made by the OSC audit team:

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.

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 interpretation.

Agency Response:

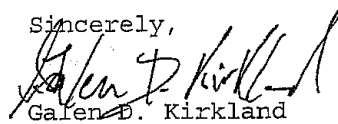
The Division's Deputy Commissioner for Finance and Administration will be tasked to coordinate implementation of these recommendations. In addition, he is registered to attend the OSC Office of Operations annual training conference on October 26-27 and will participate in panel presentations covering contract monitoring and agency compliance with state contracting regulations.

This comprises the Division's response. Questions regarding our agency's response should be directed to Stephen Rolandi, the Division's Deputy Commissioner for Finance and Administration. Mr. Rolandi can be reached at (718) 741-8360 and his e-mail address is srolandi@dhrr.state.ny.us

Mr. Frank Patone
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Mr. Rolandi's office previously completed and submitted to your office on October 1, 2010 the requested audit representation letter.

Sincerely,



Galen D. Kirkland

SR/cgf

cc: Luis R. Burgos, Jr., Esq., First Deputy Commissioner
Stephen R. Rolandi, Deputy Commissioner for Finance
and Administration
Caroline J. Downey, General Counsel
Sharon A. Bourne-Clarke, Deputy General Counsel
Lawrence Wizman, Director of Regulatory Compliance and
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Katherine Areche, Finance Administrator
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Thomas Lukacs, Division of the Budget (DOB)