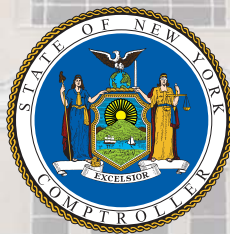




Office of Children and Family Services

Contracts for Personal and Miscellaneous Services

Report 2009-S-100



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

February 24, 2011

Ms. Gladys Carrion, Esq.
Commissioner
Office of Children and Family Services
52 Washington Street
Rensselaer, New York 12144

Dear Ms. Carrion:

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.

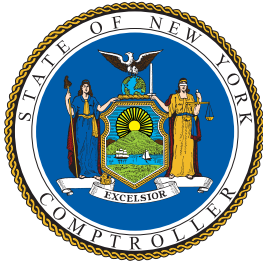
Following is a report of our audit of Contracts for Personal and Miscellaneous Services. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

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 Office of Children and Family Services (OCFS) justified its need to contract out for personal and miscellaneous services. Another objective was to determine whether OCFS 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 July 20, 2010 OCFS had 525 State-funded Service Contracts valued at \$139 million.

We found that OCFS did not justify its need to award Service Contracts. For example, we reviewed a sample of 15 Service Contracts OCFS had in place during our audit period, valued at \$23.7 million, and found that no documentation was available to justify the need for 14 of the contracted services totaling \$22.9 million. While OCFS provided us with standardized authorization forms for sampled IT contracts that indicated the reasons why the services were needed, OCFS did not provide documentation, such as written analysis, to support these assertions. We believe that supporting documentation is necessary to adequately establish that OCFS had reached the correct conclusions about the need for all of its contracted services. We recommend that going forward OCFS officials communicate to their staff the requirement to support their Service Contracts with written justification.

OCFS did not provide documentation to support that it had reassessed all of its Service Contracts. Therefore, OCFS may be missing opportunities to further reduce costs and save State funds. If it attained an 11 percent reduction in the remaining value of the Service Contracts that were active as of July 20, 2010, OCFS could realize savings of more than \$2.6 million.

Our report contains two recommendations for improving OCFS' efforts to attain savings through justification and reassessment of Service Contracts. Although OCFS officials do not believe that their existing processes were inadequate, they agreed with our recommendations and have issued directives to staff to improve contract assessments and retain appropriate documentation.

This report, dated February 24, 2011, 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 Office of Children and Family Services (OCFS) serves New York's public by promoting the safety, permanency and well-being of our children, families and communities. To help achieve its mission, OCFS enters into personal and miscellaneous services contracts (Service Contracts). According to its records, OCFS had 525 active Service Contracts with a total value of \$139.2 million during the period April 1, 2006 through July 20, 2010. These contracts were almost exclusively for information technology related services such as data processing and computer programming.

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 to 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 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 OCFS justified its need to contract out for personal and miscellaneous services (Service Contracts). Another objective was to determine whether OCFS 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 July 20, 2010.

To achieve our objectives, we interviewed OCFS personnel, and reviewed contracts and other supporting documentation provided by OCFS. We also reviewed relevant State laws, the Order and Budget Bulletins. We selected a sample of 15 Service Contracts with a total award value of \$50,000 or more from the 525 Service Contracts that were in effect during our audit period, and reviewed the records related to those contracts. We selected our sample from a database provided by OCFS. The total award value of the 15 contracts was \$23 million. The selection included contracts for information technology services such as data processing and computer programming, as well as psychiatric and medical 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 OCFS officials for their review and comment. Their comments were considered in preparing this final report and are included at the end of the report.

OCFS officials agreed with our recommendations and indicated new procedures have been put in place to strengthen the contract reassessment process. They characterized these changes as improvements to their existing systems, which they believed were already adequate. They also expressed doubt about their ability to achieve significant savings without adverse consequences to OCFS' functions and mission.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Children and Family 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 were Frank Patone, Michael Solomon, Santo Rendon, Mike Cantwell, Dick Gerard, and Richard Canfield.

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Audit Findings and Recommendations

Justification of Service Contracts

We reviewed the available documentation for our sample of 15 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 15 Service Contracts totaled \$23 million. We found that OCFS was not able to demonstrate that it had formally evaluated and justified the need for 14 of these contracts totaling \$22.9 million. While OCFS provided us with standard contract authorization forms for the IT contracts we selected that indicated reasons why the services were needed, OCFS did not provide documentation, such as written analyses, to support these assertions.

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

Reassessment of Personal and Miscellaneous Services Contracts

Based upon our review of OCFS' efforts to scrutinize Service Contract spending, we believe additional savings opportunities may have been possible. We found that OCFS 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 determine whether any can be deferred, eliminated or reduced. While OCFS officials indicated that they perform annual reviews of their Service Contracts, they agreed that these reviews are not documented. OCFS 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.

As of July 20, 2010, OCFS had a balance of \$23.7 million of unspent funds on its Service Contracts. If OCFS officials could achieve an 11 percent spending reduction on the remaining unspent balance of these contracts, as it did with other budgeted costs in 2008 and 2009, it could realize more than \$2.6 million in cost savings.

In response OCFS officials said that for all IT contracts over \$50,000 the IT Manager and Bureau Director discuss the availability of state staff to perform the work, and OCFS' Bureau of Contract Management encourages program areas to discuss procurement options to select

the best possible option to address their needs. However, none of these discussions are documented.

- Recommendations**
1. Direct executive management to 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



New York State
Office of
Children &
Family
Services

January 21, 2011

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

Dear Mr. Patone:

www.ocfs.state.ny.us

Andrew M. Cuomo
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
52 Washington Street
Rensselaer, NY
12144-2834

Please find attached the Office of Children and Family Services (OCFS) response to the Contract for Personal and Miscellaneous Services (PAMS) draft audit report dated November 30, 2010 from the Office of the State Comptroller (OSC). OCFS generally agrees with the information and recommendations contained in the draft report but would offer the following specific comments:

In the last paragraph on the first page of the Executive Summary, the report states that "OCFS did not provide documentation that it had reassessed all of its service contracts..." In the first paragraph in the Reassessment of Personal and Miscellaneous Services Contracts section, the report states that did not perform periodic reviews of the need for PAMS contracts. OCFS did provide documentation that four information technology (IT) contracts were eliminated. Further, OCFS did reassess the need for the IT contracts, although these reassessments were not documented to the satisfaction of OSC. OCFS would note that the budget bulletins and executive order cited in the draft report require that reassessments be completed, and OCFS did so in regards to the IT PAMS contracts. It is true that there was no review of the non-IT contracts, but they accounted for less than 5% of all PAMS contracts at OCFS. Moreover, the non-IT PAMS contracts were for mandated psychiatric services. Both in the past and presently, OCFS has found it very difficult to procure these services. There is and had been an ongoing need for such services well beyond what OCFS has been able to fill through PAMS contracts. Reassessment of these non-IT contracts would not have been a productive use of diminishing resources given that OCFS has established that there is a continuing unmet need.

The Executive Summary and the Reassessment of Personal and Miscellaneous Services Contracts section of the draft report state that OCFS could realize more than \$2.6 million in savings if we achieved an 11 percent reduction on the unspent balance of the PAMS contracts. That is accurate mathematically, but misleading.



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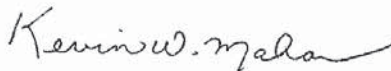
The 11 percent reduction is an arbitrary figure and makes an assumption that OCFS could eliminate 11 percent of the existing PAMS contracts. In a review of IT PAMS contracts conducted by OCFS, OCFS was able to eliminate only four contracts, which is not close to 11 percent of such contracts. As noted previously, OCFS cannot eliminate the non-IT PAMS contracts for mandated psychiatric services, to the limited extent we have been able to enter into such contracts. If OCFS eliminated 100 percent of the unspent balance on the PAMS contracts, considerably more money could be saved. However, the underlying purpose behind the PAMS contracts is to enable OCFS to successfully carry out necessary activities, and the PAMS contracts cannot be arbitrarily eliminated without serious adverse consequences to the functions and mission of OCFS. Therefore, OCFS does not view the 11 percent figure as accurate or helpful in assessing the need for PAMS contracts or the consequences of elimination of all or some such contracts.

Response to Recommendations:

Although OCFS does not agree that our process for reassessment of PAMS contracts is inadequate, OCFS has nevertheless taken steps to improve the documentation of such reassessments. BCM Bulletin C10-11 was released and posted to the OCFS Intranet on November 3, 2010 and addresses both recommendations in the draft audit report. The bulletin advises managers that they must document in the procurement record why state staff cannot perform the required tasks and that on an annual basis they must review the continued need for any personal service contract. To assist IT staff in documenting the need for consultants the Purchase Expenditure Request Form (PERF) document has been revised and now includes a section to document the consideration of using state staff to perform the function.

OCFS appreciates the opportunity to respond to this draft audit report. Please contact OCFS Audit Liaison Ralph Timber at (518) 473-0796 with any additional questions you may have on this topic.

Sincerely,



Kevin W. Mahar
Director
Office of Audit & Quality Control

Enclosure



New York State
Office of
Children & Family
Services

www.ocfs.state.ny.us

Office of Children and Family Services
Bureau of Contract Management
Contract Bulletin

Subject: Personal & Miscellaneous Service Contracts		Number: C10-11
Effective Date: November 3, 2010	Approved By: /s/ James Spoor James Spoor Director Bureau of Contract Management	OCFS Policies/ ACA Standards Affected: N/A
Supersedes: N/A		
Contact: Kevin Sweet Bureau of Contract Management		Phone: (518) 473-6008

David A. Paterson
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
52 Washington Street
Rensselaer, NY 12144

Purpose

The purpose of this Bulletin is to provide BCM and Program staff with guidance regarding requirements and documentations necessary when procuring a personal or miscellaneous service contract. These are contracts where the majority of the costs associated with the contract are for labor.

Personal or miscellaneous service contract are also commonly referred to as consulting contracts. These are contracts in which the majority of the funds allocated in the contract are for personal services. The most common uses of these contracts are for IT staff, psychiatrists or other medical providers, and program evaluations, but could include many other consultant type contracts.

Background

State Budget Bulletins B-1178 and B1183 require Agency management to scrutinize all programs and operations to identify opportunities to eliminate less important activities and spending on non-essential items.

Executive Order No. 6 requires State agencies to not enter into Qualified Personal Services Contracts exceeding \$1 million or more of personal service over any 12 month period unless the agency first determined that: (a) the contractor can carry out the task more effectively or efficiently 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.

Necessary Action

All program managers must document for the procurement record, why state staff cannot perform the required tasks, prior to entering into a personal services contract. For IT related contracts the PERF form has been modified to accommodate this requirement.

Furthermore all program managers must on an annual basis evaluate the continued need for any given personal service contract and document the evaluation.



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