THOMAS P. DiNAPOLI
COMPTROLLER

110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 30, 2014

Dr. Howard Zucker
Acting Commissioner
Department of Health
Empire State Plaza
Corning Tower Building
Albany, New York 12237

Re: Report 2012-0063

Dear Dr. Zucker:

Our Office examined[1] select expenses claimed for reimbursement by the Long Island Association for AIDS Care, Inc. (LIAAC) for the period July 1, 2011 through June 30, 2012 under contract C023121. During this examination period, the Department of Health AIDS Institute (Institute) paid LIAAC $2.3 million for the Community Service Provider (CSP) program. Our objective was to determine whether LIAAC charged and the Institute reimbursed for appropriate expenses under the terms of the contract.

A. Results of Examination

We found the Institute reimbursed LIAAC $178,466 for inappropriate or questionable expenses during our examination period. This includes reimbursements to LIAAC for expenses that benefited a related organization with the same Chief Executive Officer (CEO) and three of the same Board of Director (Board) members; reimbursements for the CEO's allowance that evidence shows she used for personal expenses or that she failed to support was used for business-related expenses; expenses for subcontracts that were not procured in accordance with the Institute's or LIAAC's own requirements, including a subcontract with the CEO's life partner; and expenses which were otherwise inappropriate under the terms and conditions of the contract.

Of the $178,466, expenses totaling $113,229 may have been reimbursed over the life of this five-year contract. If these reimbursement amounts remained the same over the other four years, we estimate LIAAC used Institute funds totaling an additional $452,916, for a total of $631,382 for inappropriate or questionable purposes.

[1]We performed our examination in accordance with the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law.

For some of these findings, we question whether the CEO breached her fiduciary responsibilities to LIAAC. Specifically, during our examination period, Institute funds totaling $100,776 intended for the purpose of sustaining organizational viability were inappropriately used: (i) to pay the CEO's allowance but were for the personal benefit of the CEO and her life partner or had no apparent business benefit to LIAAC ($7,520), (ii) for a questionable consultant contract with the CEO's life partner that is a conflict of interest ($7,620), and (iii) to pay the Long Island Network of Community Services (LINCS), an organization for which the LIAAC CEO is also compensated as CEO, under arrangements that financially benefit LINCS but lack clear or documented benefits to LIAAC ($85,636). By paying $85,636 in Institute funds to LINCS, the CEO freed those funds from the constraints of the contract and the scrutiny of the Institute while still allowing the CEO to maintain control of the funds. If these inappropriate reimbursements were consistent over the life of this contract, we estimate LIAAC may have paid an additional $403,104, for a total of $503,880 in inappropriate or questionable purposes during the contract term.

We have referred the findings in this report to the New York State Office of the Attorney General for its review.

These inappropriate and questionable reimbursements occurred because the Institute did not provide proper oversight to hold LIAAC accountable to the terms and conditions of the contract. Further, Institute officials charged with monitoring LIAAC's contract lack the skepticism necessary to recognize and properly address high-risk transactions.

We shared a draft report with Department of Health officials (officials) and considered their comments (Attachment A) in preparing this final report. The comments of the State Comptroller on the Department of Health's response are in Attachment B. The officials agreed with our findings outlined in this report and stated they will be implementing controls to address the findings. Specifically, the officials agreed to recover $68,640 for certain inappropriate reimbursements made to LIAAC, review additional reimbursements totaling $65,452 to determine the appropriateness and recover as necessary or take corrective action, and to address the Department's weakness in controls for the remaining $44,374. The officials also agreed to recover additional reimbursements made to LIAAC since the inception of the contract.

In addition to this contract, the Institute held four other contracts with LIAAC during points in our examination period with payments totaling $2,389,927. Given the extent of the findings in this report, the Institute may have made additional reimbursements to LIAAC for the same type of inappropriate or questionable expenses. The Institute should consider examining expenditures under these four contracts to identify and recover funds for other inappropriate or questionable expenses. In response to the draft report, the officials agreed to review these other contracts and recover inappropriate reimbursements as necessary.

B. Background and Methodology

Since 1986, LIAAC has received CSP funding to provide services and support for Long Island residents infected and affected by HIV/AIDS or at risk for infection. The contract we examined totaled $12 million and covered the five-year period July 1, 2008 through June 30, 2013. The Institute has since executed a new CSP contract with LIAAC totaling $11.43 million for the period July 1, 2013 through June 30, 2018. For our examination period, the Institute reimbursed LIAAC $2.3 million for claimed expenses classified as personal services; fringe benefits; supplies; travel; subcontracts; equipment; and "miscellaneous," including rent, utility, and telephone costs.

LIAAC rents its principal place of business from LINCS, a related organization whose stated mission is to support other health and human service organizations on Long Island. Currently, LINCS supports LIAAC and BiasHELP, a LINCS affiliate. In addition to rent, LIAAC pays LINCS for certain insurances and purchases group medical benefits from LINCS, which is self-insured for medical insurance. LINCS, whose own staff occupies space in the building, also rents space to BiasHELP, as well as to the State University of New York at Stony Brook (Stony Brook).

LIAAC, LINCS and BiasHELP share some of the same employees and Board members. For example, LIAAC's CEO serves and receives compensation as the CEO of LINCS, and served as the CEO of BiasHELP through 2011. LIAAC's Chief Financial Officer (CFO) and three Board members during the course of our examination also served in these capacities at both LINCS and BiasHELP. Throughout this report, any reference to these shared employees should not be interpreted as specific to the role at any one entity, but rather to describe the action or statement of the person.

To perform our examination, we reviewed the contract, the Institute's and LIAAC's policies, invoices, bank records, and other pertinent documentation. We also interviewed Institute and LIAAC employees and consulted with the Office of General Services' (OGS) Real Estate Planning and Development Group and our Office's Bureau of Contracts regarding LIAAC's lease agreement with LINCS.

C. Details of Findings

Appendix A-2 of the contract, *Standard Clauses for All AIDS Institute Contracts*, states grantees are reimbursed for expenses necessary to sustain organizational viability. The Institute requires grantees to follow the Federal Office of Management and Budget (OMB) Circulars A-122: *Cost Principles for Non-Profit Organizations* (A-122) and A-110: *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*. One of the overarching requirements in A-122 requires each expense to be reasonable and necessary for the performance of the contract and adequately documented. A-122 outlines additional requirements specific to certain types of expenses (e.g., rent, travel) for them to be allowable.

Rent Paid to LINCS

A-122 allows reimbursement to grantees for rental costs to the extent they are reasonable and in line with market rates. A-122 also recommends rental arrangements be reviewed periodically to determine if circumstance have changed and other alternatives are available. We worked with representatives from OGS to evaluate LIAAC's 30-year lease with LINCS and conservatively estimate the Institute reimbursed LIAAC $52,972 for rental expenses in excess of rates for comparable properties during our examination period. If LIAAC's rental costs and the allocation rate to the contract remained the same throughout the other four years of the contract, we estimate the Institute reimbursed LIAAC an additional $211,888, for a total of $264,860 in rental costs that were in excess of fair market value during the contract term. OGS also determined the lease's escalation clauses combined with the non-cancelable 30-year term are not in line with industry standards, and therefore exacerbate the excessive amount of rent LIAAC pays. The Office of the State Comptroller's Bureau of Contracts, which has expertise in the area of real property and lease agreements, concurs with OGS's determination regarding the escalation clauses and lease term. Furthermore, LIAAC's lease was executed by the CFO at the time, who was the CFO for both LINCS and LIAAC.

Subsequent to the completion of our field work and the issuance of the draft report, LIAAC provided us with various documents that purport to reflect market lease rates in the Long Island area. These rates conflict with OGS's determination. Given the disparity in rates between OGS and LIAAC and the lengthy lease term between the related parties, we will continue to recommend the Institute require a fair market value analysis be conducted by an independent third party not selected by LIAAC.

Utility and Telephone Expenses

During the examination period, the utility expenses (gas and electric) for the entirety of the building were billed by the utility provider directly to LINCS. In turn, LINCS passed the entire bill on to LIAAC without allocation for LINCS's, BiasHELP's, or Stony Brook's respective shares. LINCS, LIAAC and BiasHELP also share a telephone system, and LIAAC paid the entirety of telephone expenses without allocation to LINCS and BiasHELP for their use.

During our examination period, the Institute reimbursed LIAAC $5,990 for utility and telephone expenses incurred by LINCS, BiasHELP and Stony Brook. If the utility expenses and the allocation rate to the contract remained the same throughout the other four years of the contract, we estimate the Institute reimbursed LIAAC an additional $23,960, for a total of $29,950 for the other entities' utility and telephone costs during the contract term. The CEO acknowledged LIAAC should not be paying the entirety of the utility expenses and instituted a new methodology to allocate these costs to the occupants of the building. However, we found this methodology is flawed and continues to result in LIAAC paying a portion of the other entities' utility costs.

Administrative Fees Paid to LINCS

LINCS charged and LIAAC paid administrative fees on certain expenses, including utilities and various insurances. During our examination period, the Institute reimbursed LIAAC $26,674 for a portion of the fees it paid LINCS on utility expenses, employee health insurance, short-term and long-term disability insurance, and workers' compensation insurance. We found these administrative fees were neither justified nor appropriate.

There was no written agreement between LIAAC and LINCS defining the services LINCS would provide for these fees or the benefits LIAAC would receive in exchange for these fees. In addition, over the course of the examination, the CEO gave us several different explanations for paying these fees. We disagree with all of the CEO's justifications for these fees. Specifically:

- The CEO stated the fees on utility expenses cover the usage of LINCS's maintenance worker, who would be responsible for troubleshooting any utility problems within the building. However, the fees LIAAC paid to LINCS during our examination period were 21 percent greater than the maintenance worker's estimated wages. This exceeds whatever portion of the time the maintenance worker would devote to LIAAC due to power outages, and furthermore, does not consider the other building occupants' share for these costs.

- The CEO told us the fees for employee health insurance were to cover LINCS's liability. However, LINCS passes all costs for employee health insurance onto LIAAC, and therefore, we found no evidence of a liability. Furthermore, neither the CEO nor LINCS's health insurance broker could provide evidence of a liability.

- With regard to the fees on the other insurance expenses, the CEO told us LIAAC receives a lower rate by purchasing a policy with LINCS and BiasHELP. However, the CEO could not provide evidence to support any cost savings LIAAC receives as a result of this arrangement. Furthermore, BiasHELP and LINCS had six and seven employees, respectively, during 2012 while LIAAC had 79. Therefore, the preponderance of greater purchasing power resulting from the group purchase of insurance benefits LINCS and

BiasHELP, not LIAAC. We question whether any cost savings LIAAC may receive are overshadowed by the administrative fees.

If the insurance expenses and the allocation rate to the contract remained the same throughout the other four years of this contract, we estimate the Institute reimbursed LIAAC an additional $106,696, for a total of $133,370 during the contract term.

Subsequent to the completion of our field work and the issuance of the draft report, LIAAC's Board Vice-Chair proposed that the inappropriate administrative fees be offset by expenses that he indicates were the responsibility of LIAAC but were paid for by LINCS during the audit period. As a result, we recommend the Institute review the expenses in question to determine whether they are appropriate to reimburse under this contract, bona fide, accurate and allocated correctly. If so, the Institute should offset the inappropriate administrative fees accordingly.

Travel Category Expenses

The Institute requires grantees to follow the travel expense requirements of A-122, which allow for the reimbursement of employee transportation costs for actual costs incurred, a mileage basis in lieu of actual costs incurred, or a combination of the two. The Institute also requires LIAAC to follow its own internal travel policy, which states employees will be reimbursed for actual costs for travel while on assignment.

During the examination period, the Institute reimbursed LIAAC for inappropriate or unsubstantiated expenses totaling $22,225 charged to the travel budget category. This includes $7,520 for a portion of the CEO's monthly allowance and $14,705 for other travel-related expenses.

The CEO's Monthly Allowance

The CEO received a monthly allowance from LIAAC of $1,350 per month (or $16,200 per year) specifically for her business-related expenses, including business-related travel. Because the Institute reimbursed LIAAC a percentage of the allowance on a monthly basis, we requested records to support the CEO's total allowance during our examination period. It was only after our fifth request that the CEO provided records to support her allowance.

We reviewed these records and found that for $15,328 (nearly 95 percent), the CEO failed to demonstrate the expenses were business-related or the evidence provided supports some of the expenses were personal. Of this inappropriate amount, the Institute reimbursed LIAAC $7,520. If the CEO's inappropriate or unsubstantiated travel expenses remained the same throughout the other four years of the contract, we estimate the Institute reimbursed LIAAC an additional $30,080, for a total of $37,600 for inappropriate travel expenses during the five-year contract term.

Furthermore, had the CEO demonstrated the business purpose for some of these expenses, we would continue to question whether these expenses were reasonable and necessary for the performance of the contract and/or were travel-related (e.g., Verizon expenses for the CEO's personal residence). The CEO also failed to identify the elements (e.g., business purpose, mileage) required by the Internal Revenue Service (IRS) to appropriately exclude $15,328 as taxable income on her W-2. As a result, we question whether these expenses may have federal and state income tax implications.

Of the $15,328 in personal or unsupported expenses, the CEO attributed:

- $6,120 to the business use of her two vehicles (exclusive of fuel) and insurance but was unable to substantiate the expenses were business-related. According to the CEO and the Board Vice-Chair, the Board had determined this portion of the CEO's total allowance to be automatically allocated for the use of the CEO's personal vehicles and that the CEO was not required to maintain records or receipts. However, the Vice Chair stated the Board failed to document these decisions or the factors that led to determining the amount allocated was reasonable, and the Board's permission for the CEO to omit records for this expense is not consistent with IRS requirements. Furthermore, one of the vehicles registered to the CEO bears a vanity license plate that matches that of her life partner's email username and contains her life partner's initials. This evidence suggests the CEO's life partner, who does not have any vehicles registered in her name, may be the primary user of this vehicle, and that the CEO allowed her life partner to also personally benefit from the allowance that was funded, in part, by the Institute.

- $4,417 to fuel expenses but was unable to substantiate the expenses were business-related. For $4,213 of these expenses (or 95 percent of the total), the CEO provided us with her personal fuel card statements, two of which had been manipulated to redact the itemized transactions. We subsequently obtained these statements directly from the fuel vendor and found out-of-state fuel card transactions on days that coincided with days the CEO took personal time. The only fuel card statements that were manipulated were those containing out-of-state transactions, and therefore, we question whether the CEO deliberately redacted this information. As a result, we conclude some of the CEO's fuel card expenses were personal. Also, evidence we reviewed, including the type of fuel and the frequency of the transactions, indicates the fuel card expenses were for multiple cars. This suggests the CEO allowed her life partner to also personally benefit from the allowance that was funded, in part, by the Institute.

- $4,791 to meals, grocery items, personal residential Verizon expenses, personal cell phone expenses, and other miscellaneous expenses (e.g., train tickets) the CEO failed to substantiate were business-related. It appears some of these expenses were personal, such as a one-way Amtrak ticket for $120 from Atlantic City, New Jersey, to New York Penn Station on a Sunday and $53 for parking in New York City on the same day the CEO took a personal day. In addition, we question whether other expenses, including purchases of seafood and meat from a grocery store and chocolate for a board meeting, were reasonable and necessary for the performance of the contract.

Additional Travel Category Expenses

The Institute reimbursed LIAAC for additional inappropriate expenses totaling $14,705 charged to the travel budget category, as follows.

- $10,722 for the fuel card expenses of six executive-level LIAAC employees, a BiasHELP employee (who is also LIAAC's Board Vice-Chair) and a program identified as "meals" where LIAAC (i) failed to require employees to maintain records to substantiate these expenses as business-related, or (ii) the fuel expenses benefited BiasHELP, not LIAAC. In addition, LIAAC failed to require the executive-level employees to substantiate certain elements required by the IRS to appropriately exclude these expenses from the employees' W-2s. As a result, we question whether these expenses may have federal and state income tax implications. Had these inappropriate reimbursements for fuel expenses remained the same throughout the other four years of the contract, we estimate the Institute reimbursed LIAAC an additional $42,888 for these inappropriate expenses, for a total of $53,610 during the five-year contract term.

- $3,983 for various inappropriate expenses. These include $2,950 for client bus passes the CEO told us were also charged to another funding source; $768 in expenses for which LIAAC failed to provide supporting documentation ($554 of this also appears to have been billed to another funding source subsequent to the Institute's reimbursement); and $265 in employee travel expenses for which the business purpose references a fundraising event, which is prohibited from reimbursement under the contract.

Subcontractor Expenses

The Institute requires LIAAC to conduct a competitive procurement for subcontractors regardless of the amount reimbursed by the contract, and to submit line item budgets and work scopes for subcontractor expenses charged to the contract in excess of $10,000. The Institute also requires LIAAC to maintain records of the basis for contractor selection and a justification for lack of competition, when applicable, and prohibits officers of LIAAC from participating in a contract where a real or apparent conflict of interest exists. LIAAC's own policy requires competitive bidding for awards in excess of $10,000 and also prohibits the hiring of LIAAC employees' relatives within the same line of authority.

LIAAC failed to competitively procure three subcontracts, including one for a Medical Information Consultant (Consultant), totaling a combined $240,112 for which the Institute reimbursed $31,190. LIAAC also failed to provide documentation adequately justifying the lack of competition for the subcontracts in question. Additionally, for one of these subcontracts (for public relations services) LIAAC budgeted less than the threshold requiring the submission of a line item budget and work scope, but charged more than the threshold, thereby circumventing this requirement.

OMB Circular A-110 prohibits procurements where a real or apparent conflict of interest exists. However, in addition to LIAAC's failure to competitively procure a subcontract for the Consultant, we found that the Consultant's contract with LIAAC constitutes a conflict of interest as defined by OMB Circular A-110 and LIAAC's own internal policy because the Consultant and the CEO are life partners. The Consultant has served in this capacity at LIAAC since 1988 and the two have had a personal relationship since the late 1980s. We also found that this conflict of interest is not limited to LIAAC because the CEO's life partner was also retained as a paid consultant of LINCS, the other entity led by the CEO. Institute officials were unaware of the personal relationship between the CEO and Consultant, and LIAAC only acknowledged the personal relationship after auditors brought it to the CEO's attention.

Subsequent to the completion of our field work and the issuance of the draft report, LIAAC's Board Vice-Chair attempted to dispute that a conflict of interest exists. Specifically, the Vice-Chair contends that the Board does not involve the CEO with the Consultant's contract or duties in order to mitigate any conflict of interest. The Vice-Chair also contends the Board sequestered the CEO to prevent her from participating in the selection, award or administration of the contract. However, Board meeting minutes show that the renewal of the Consultant's contract and her compensation rate was discussed in the presence of the CEO.

Additionally, the Board Vice-Chair asserts that the Board is responsible for overseeing the Consultant's responsibilities in order to mitigate any conflict of interest. However, during our examination period, the Chief Operating Officer (COO) was responsible for approving the consultant's invoices for payment and the COO and Chief Technology Officer dually signed the checks payable to the Consultant. LIAAC's own policy prohibits the hiring of relatives within the same line of authority in order to mitigate any conflict. However, since the COO reports directly to the CEO, the Consultant occupies a position within the same line of authority as the CEO, thereby violating LIAAC's own policies.

During the examination period, the Institute reimbursed LIAAC $7,620 for this Consultant. If the Consultant's expenses and the allocation rate to the contract remained the same during the other four years of the contract term, we estimate the Institute reimbursed LIAAC an additional $30,480, for a total of $38,100 in inappropriate Consultant expenses during the contract term.

The Consultant resigned from her position at LIAAC effective August 1, 2013 – the same day our auditors discussed the conflict of interest with the CEO. It appears LIAAC made no attempt to replace the Consultant until our auditors inquired about the matter in May 2014, at which time LIAAC officials stated they had been advertising the position "for the past six months." However, the advertisements LIAAC officials provided to document their actions either did not contain a date or were dated May 7, 2014 (the same date our auditors requested copies of the advertisements). We independently verified the advertisements LIAAC provided to us and found a portion of one advertisement containing the May 7, 2014 date had been removed prior to being provided to our auditors. Furthermore, the "Employment Opportunities" section of LIAAC's own website did not contain this job posting.

This leads us to question whether LIAAC officials had any intention of replacing the Consultant, whether the position was ever necessary and whether her life partner fully performed the services for which she was compensated.

Personal Service Expenses

LIAAC requires employees to participate in several fundraising events as part of their regular work duties, including an annual fundraising event called "Chef's Secrets." According to A-122 and Institute officials, personal service costs for fundraising activities are not allowable under the contract. We reviewed LIAAC employees' timecards for the Chef's Secrets event during our examination period and found the Institute reimbursed LIAAC at least $1,731 for personal service costs related to fundraising as documented on the employees' timecards. If, over the other four years of the contract term, these inappropriate reimbursements remained constant, we estimate the Institute reimbursed LIAAC an additional $6,924, for a total of $8,655 in inappropriate personal service costs for the Chef's Secrets event. Furthermore, we recognize that not all fundraising activities performed by employees are necessarily documented on the timecards we reviewed. As a result, the Institute may have reimbursed LIAAC for additional inappropriate personal service costs related to fundraising activities.

Additionally, LIAAC's part-time Public Affairs Coordinator's job description and resume indicate she performs fundraising activities, which are not reimbursable under the contract, as part of her normal work duties. Furthermore, the CEO told us the Public Affairs Coordinator's sole function is fundraising. As a result, we question the appropriateness of the Institute's reimbursement for the employee's entire part-time salary of $12,480. In response to the draft report, the Institute agreed to review the duties of the Public Affairs Coordinator to determine if any or all of her position at LIAAC was related to fundraising and recover any costs accordingly.

Budgeted Versus Actual Expenses and Duplicate Reimbursements

Prior to the start of each budget year, LIAAC is required to submit a budget to the Institute outlining its aggregate planned expenses for each budget category. For the subcontractor and miscellaneous budget categories, LIAAC must also itemize the individual planned expenses (i.e., line items) that comprise the aggregate amount budgeted. We found that while the aggregate amount budgeted for these categories reconciled to the aggregate amount LIAAC charged, the individual line items did not. Additionally, for the line items within the subcontractor category, LIAAC billed the same $4,400 expense to the contract twice and charged $2,078 for expenses unrelated to a subcontractor or for a vendor not approved by the Institute as a subcontractor. Also, LIAAC charged an additional $18,726 for two subcontractors to other budget categories. Had LIAAC charged these expenses to the subcontractor budget category, it would have increased the amount LIAAC was approved to charge to the subcontractor category by 49 percent, and therefore, LIAAC would have been required to submit a modification to the Institute for approval.

The CEO's Fiduciary Responsibility

By virtue of her positions as CEO and an Executive Committee member of LIAAC's Board, the CEO has a fiduciary responsibility to adhere to a standard of reasonable care and act in the best interests of LIAAC. This includes ensuring any agreements LIAAC enters into with other organizations are fair and reasonable and precluding herself from any situations that are or may appear to be a conflict of interest or that benefit her personally.

Based on the findings in this report, we question whether the CEO breached these fiduciary responsibilities. For example, the CEO consistently failed to adhere to a standard of reasonable care or act in the best interest of LIAAC when, under her leadership, LIAAC:

- Entered into a lease with LINCS that exceeded fair market value and included escalation clauses and a non-cancelable 30-year term that are anomalous with industry standards.
- Paid for utilities and telephone expenses that were the responsibility of LINCS and BiasHELP, LINCS's affiliate.
- Paid administrative fees to LINCS that were not justified or were inappropriate. Doing so also freed State funds from the constraints of the contract and scrutiny of the Institute.

- Provided the CEO with a monthly allowance that evidence showed the CEO used for personal expenses, that may have benefited the CEO's life partner, or that the CEO could not support she used for business-related expenses.

- Entered into consultant contracts with the CEO's life partner in 1988 until the Consultant's resignation in August 2013. Although the CEO claimed the relationship was disclosed to Institute officials, Institute officials were not aware of it until we disclosed it to them.

During our examination period, LIAAC inappropriately used $100,776 of Institute funds intended for the purpose of sustaining organizational viability: (i) for the financial benefit of LINCS, (ii) to pay the CEO's allowance but were for the personal benefit of the CEO or her life partner or had no apparent business benefit to LIAAC, and (iii) for a questionable consultant contract with the CEO's life partner. Furthermore, these types of expenses may have been reimbursed over the life of this five-year contract. If the reimbursement amounts were constant over the other four years of this contract, we estimate LIAAC used Institute funds totaling an additional $403,104, for a total of $503,880 in inappropriate or questionable purposes.

In addition, the CEO did not act in the best interest of LIAAC when she failed to provide records related to her monthly allowance to our auditors until after numerous requests, provided multiple dubious explanations for why LIAAC pays administrative fees to LINCS, and provided fuel card statements that appeared to have had pertinent information deliberately redacted to conceal these inappropriate reimbursements from our auditors.

The Institute's Controls

The Institute's reimbursement of the inappropriate or questionable expenses outlined in this report occurred largely for two reasons. First, the Institute did not provide proper oversight to hold LIAAC accountable to the terms and conditions of the contract. Second, Institute officials charged with monitoring LIAAC's contract lack the skepticism necessary to recognize and address high-risk transactions. For example, Institute officials were aware that LIAAC rents the space it occupies from LINCS, a related entity with the same CEO. Notwithstanding, Institute officials told us this relationship does not pose a risk, and therefore, did not implement controls to compensate for the inherent risk associated with the related-party rental expenses. Furthermore, the Institute's biannual fiscal review of LIAAC in June 2011 included a review of utilities and certain insurance expenses paid to LINCS, yet Institute officials failed to detect the inappropriate fees, nor was there any indication Institute officials questioned the arrangement between LIAAC and LINCS. As a result, the Institute failed to identify the inappropriate or questionable expenses that it reimbursed LIAAC.

As part of its normal business process, the Institute does not review subcontractor procurements unless the amount budgeted to the contract exceeds the competitive threshold. This approach resulted in LIAAC improperly procuring three subcontractor procurements, of which one is a conflict of interest. Institute officials acknowledged that LIAAC's travel budget was high compared to other grantees, yet failed to select any travel expenses as part of its June 2011 biannual fiscal review. For fundraising expenses, Institute officials told us they do not monitor these activities because their grants do not allow for reimbursement. However, we found the Institute did reimburse LIAAC for fundraising. As a result, the Institute's decision not to monitor fundraising is imprudent. Furthermore, the Institute does not collect a detailed list of expenses charged to the contract, with the exception of personal service and equipment expenses. Therefore, the Institute has no assurance that grantees' actual charges are in line with the approved budget. Also, the Institute's decision not to collect this information prevents the Institute from readily verifying the expenses comply with the contract.

Recommendations

1) *Recover $41,966 for the inappropriate reimbursements outlined within related to utility and telephone expenses ($5,990), travel category expenses ($22,225), the Consultant ($7,620), personal service costs related to the Chef's Secrets event ($1,731), and the duplicate subcontractor reimbursement ($4,400).*

1a) *Review the specific expenses LIAAC indicates LINCS paid on behalf of LIAAC to determine whether they are appropriate to reimburse under this contract, bona fide, accurate and allocated correctly. Determine the extent to which these specific expenses should be offset against the $26,674 in inappropriate administrative fees LIAAC paid LINCS. Recover the remaining inappropriate administrative fees.*

2) *Retain an independent third party to perform a fair market value analysis of LIAAC's lease agreement with LINCS and to obtain assurance LIAAC employees are occupying the entirety of the space identified in the lease agreement. Recover excessive rent reimbursements accordingly.*

3) *Review LIAAC's allocation methodology for utility costs to ensure it does not result in the Institute's reimbursement for other entities' utility expenses.*

4) *Develop oversight activities that consider the entire amount of subcontractor procurements as opposed to the amount billed to the contract.*

5) *Perform a thorough review of additional reimbursements made since the inception of the contract with regard to the conflict of interest with the Consultant and recover inappropriate reimbursements as appropriate.*

6) *Develop effective oversight activities to ensure the Institute does not reimburse grantees for fundraising expenses.*

7) *Review the Public Affairs Coordinator's position description and recover any reimbursements made for fundraising activities.*

8) *Continue to develop control activities that ensure high-risk grantees, such as LIAAC, are held accountable to the terms and conditions of the contract.*

9) *Ensure employees charged with monitoring the Institute's contracts possess the skepticism necessary to identify and question high-risk transactions.*

10) *Collect a list of itemized expenses grantees charge to the contract and review this information for grantees the Institute considers high-risk.*

11) *Recover reimbursements for similar inappropriate or questionable costs since the inception of this contract as well as similar reimbursements made to LIAAC under separate Institute contracts.*

12) *Ensure future vouchers payable to LIAAC include only those expenses that comply with the terms and conditions of the contract.*

We thank the management and staff of the Department of Health for the courtesies and cooperation extended to our auditors. Since your response to the report is in agreement with these recommendations, there is no need for further response unless you feel otherwise. If you choose to provide a response, we would appreciate receiving it by October 30, 2014 indicating any actions planned to address the recommendations in this report.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Enc: Attachment A
Attachment B

cc: Sue Kelly, Executive Deputy Commissioner
Diane Christensen, Director of Audit Services
Dan O'Connell, Director, AIDS Institute

NEW YORK
state department of
HEALTH

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

Sue Kelly
Executive Deputy Commissioner

August 7, 2014

Mr. Bernard J. McHugh
Director of State Expenditures
Office of the State Comptroller
Division of State Government Accountability
110 State Street
Albany, NY 12236-0001

Dear Mr. McHugh:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Draft Audit Report 2012-0063 entitled, "Examination of Payments the Department Made to Long Island Association for AIDS Care, Inc. under Contract C023121."

Thank you for the opportunity to comment.

Sincerely,

Sue Kelly

Sue Kelly
Executive Deputy Commissioner

Enclosure

cc: Michael J. Nazarko
Robert W. Locicero, Esq.
Guthrie S. Birkhead, M.D., M.P.H.
Ellen Anderson
Daniel O'Connell
Valerie White
Douglas Manion
Edward Cahill
Marybeth Hefner
Elizabeth Wood
Diane Christensen
Lori Conway

Attachment A

Department of Health
Comments on the
Office of the State Comptroller's
Draft Audit Report 2012-0063 Entitled
Examination of Payments the Department Made to
Long Island Association for AIDS Care, Inc. (LIAAC)
Under Contract C023121

The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Draft Audit Report 2012-0063 entitled, "Examination of Payments the Department Made to Long Island Association for AIDS Care, Inc. (LIAAC) Under Contract C023131."

During the audit period, LIAAC continued to meet its contract deliverables and provide services in accordance with program standards. LIAAC's services reach a very large catchment area and concentrates coverage in the highest risk communities on Long Island. However, the AIDS Institute (Institute) acknowledges that our control environment for assessing risk in organizations with complex corporate structures needs improvement. Therefore, the Institute is in the process of updating many of its internal procedures and monitoring protocols. Finally, we are putting LIAAC on a corrective action plan to address structural issues documented in this report and will review and recover disallowances.

Recommendation #1:

Recover $68,640 for the inappropriate reimbursements outlined within related to utility and telephone expenses ($5,990), administrative fees paid to LINCS ($26,674), travel category expenses ($22,225), the Consultant (($7,620), personal service costs related to the Chef's Secrets event ($1,731), and the duplicate subcontractor reimbursement ($4,400).

* Comment 1

Response #1:

The Department will seek to recover $68,640 by reducing the contract vouchers on LIAAC's current Community Services Program (CSP) contract. We will establish a schedule to recover these funds, allowing LIAAC to continue to provide HIV services on Long Island, while paying back the State for inappropriate expenses.

Recommendation #2:

Retain an independent third party to perform a fair market value analysis of LIAAC's lease agreement with LINCS and to obtain assurance LIAAC employees are occupying the entirety of the space identified in the lease agreement. Recover excessive rent reimbursements accordingly.

Response #2:

The Department will work with LIAAC to procure an independent third party to perform a fair market value analysis. Until the assessment is completed, LIAAC will be allowed to voucher for space as described in the approved contract. Once the assessment is received, the Department will implement corrective action based on the fair market value analysis.

*See State Comptroller Comments, Attachment B

The allocation of space costs to the Department contracts will be reviewed to ensure the cost covers only space used by LIAAC employees and not employees of LINCS or Biashelp; and that these costs are allocated fairly across contracts based on a sound allocation methodology.

Recommendation #3:

Review LIAAC's allocation methodology for utility costs to ensure it does not result in the Institute's reimbursement for other entities' utility expenses.

Response #3:

The Department has reviewed the methodologies used for allocation of utility expenses charged to our contracts to ensure no other entity's share is included in our reimbursement. All original utility bills must now accompany the full back-up required on expenses.

Recommendation #4:

Develop oversight activities that consider the entire amount of subcontractor procurements as opposed to the amount billed to the contract.

Response #4:

The Department has implemented the recommended oversight activity. A contract and work scope is now reviewed for the entire amount of each subcontractor procurement. We are asking LIAAC to describe how the contract's fair share relates to the contract work plan. This practice will be included as an update to the *"Contracting With the AIDS Institute"* manual.

Recommendation #5:

Perform a thorough review of additional reimbursements made since the inception of the contract with regard to the conflict of interest with the Consultant and recover inappropriate reimbursements as appropriate.

Response #5:

As stated in Response #1 above, the Department will recover $7,620 for the Medical Information Consultant for the year that was audited (2011-12) by OSC. Also, the Department will recover additional reimbursements made since the start of this five year contract. For the current contract (2013-14) the Department will require the charges be reversed with a corrective voucher before contract close-out.

The Department will update its fiscal monitoring procedures to look at transactions that involve either related parties or where potential conflict of interest may exist. This update will become part of the monitoring tools included in the "*Site Visit Monitoring*" manual.

Recommendation #6:

Develop effective oversight activities to ensure the Institute does not reimburse grantees for fundraising expenses.

Response #6:

The Department has developed and will be implementing new fiscal monitoring guidance to help ensure fund raising expenses are not billed to our contracts. This guidance is based on OMB circular A-122; Attachment B – Selected Items of Cost; Paragraph #17 - Fund raising and investment management costs and Paragraph #1 – Advertising and public relations costs. It includes:

- Review of contractor position descriptions to determine allowability of salaries charged to the contract.
- Interview with contractor which includes a discussion about staff who work at the fund raising events to determine if any grant dollars were used to pay their salaries or travel costs.
- Interviews with staff who participate in fund raising events and ask how compensation is handled.
- Review costs to ensure that none of the costs were related to fund raising activities.

In addition, the Department will develop new guidance for providers about the allowability of fund raising costs. This new guidance will address the issues uncovered in the OSC audit. It will be mailed to all current Institute providers and become part of the *"Contracting With the AIDS Institute"* manual.

Recommendation #7:

Review the Public Affairs Coordinator's position description and recover any reimbursements made for fundraising activities.

Response #7:

LIAAC will be provided the opportunity to submit evidence detailing the work done by the Public Affairs Coordinator. Items such as monthly reports, e-mails, work products, and calendars will be requested and reviewed using professional skepticism to determine if the time allocated to contract was allowable. Should this review result in a determination that the activities billed to the contract were not allowable, the Department will seek to recover the funds for the entire contract period.

Recommendation #8:

Continue to develop control activities that ensure high-risk grantees, such as LIAAC, are held accountable to the terms and conditions of the contract.

Response #8:

The Department acknowledges its risk assessments were developed to identify agencies in poor fiscal health and focused on them as the highest risk agencies. The Department is reviewing its risk assessments and adding a broader look at other characteristics of high risk grantees. One example is a closer look at any agency transacting business with a related party. We will be developing other control activities and adding them to our procedures of contracting and contract monitoring.

Recommendation #9:

Ensure employees charged with monitoring the Institute's contracts possess the skepticism necessary to identify and question high-risk transactions.

Response #9:

The Fiscal Monitoring Workgroup which oversees the fiscal monitoring activities for the AIDS Institute will be working with staff to create a higher level of professional skepticism. The workgroup will:

- Create a section in the "*Site Visit Monitoring*" manual addressing professional skepticism.
- Develop training for managers and staff.
- Create awareness of the importance this plays in monitoring activities.

Recommendation #10:

Collect a list of itemized expenses grantees charge to the contract and review this information for grantees the Institute considers high-risk.

Response #10:

The Fiscal Monitoring Workgroup will:

- Establish the format and requirements for the list of itemized expenses.
- Establish the criteria to be used by reviewers to determine if this list of itemized expenses should be implemented, rather than full back-up.
- Establish guidance for the use of full back-up, a list of itemized expenses, or a combination of both.

Recommendation #11:

Recover reimbursements for similar inappropriate or questionable costs since the inception of this contract as well as similar reimbursements made to LIAAC under separate Institute contracts.

Response #11:

The Department acknowledges the extensive and thorough review resulting in the findings for the year audited. This audit took two years to complete with many individuals contributing to the review. The Department will review disallowances from the year audited and then disallow and recover the same expenses for the other years in the contract term.

The disallowances will also be applied to the other LIAAC contracts on a proportional basis.

Recommendation # 12:

Ensure future vouchers payable to LIAAC include only those expenses that comply with the terms and conditions of the contract.

Response #12:

All vouchers from LIAAC on any contract with the Department now require full back-up. These vouchers are reviewed in light of the findings of this audit. The full backup requirement will continue for at least six months until the Department can assess on-going compliance, at which time LIAAC will still be required to submit an itemized list of all expenses on each voucher.

Also, expenses proposed in the contract budget will be further reviewed to ensure allowability. This review will also take into consideration the findings of this audit.

Attachment B

State Comptroller Comments on Auditee Response

1. Subsequent to the completion of our field work and the issuance of the draft report, LIAAC's Board Vice-Chair proposed that the inappropriate administrative fees be offset by expenses that he indicates were the responsibility of LIAAC but were paid for by LINCS during the audit period. As a result, we removed reference to administrative fees from recommendation 1 and added recommendation 1a, separately addressing the administrative fees.