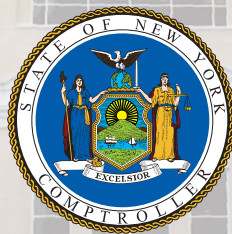




**New York State
Office of Temporary and
Disability Assistance
Contracts for Personal and
Miscellaneous Services**

Report 2009-S-101



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

December 23, 2010

Ms. Elizabeth R. Berlin
Executive Deputy Commissioner
Office of Temporary and Disability Assistance (OTDA)
40 N. Pearl Street
Albany, New York 12243

Dear Ms. Berlin:

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.

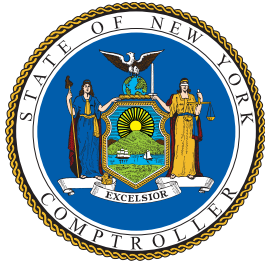
Following is a report of our audit of OTDA's Contracts for Personal and Miscellaneous Services. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

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 Temporary and Disability Assistance (OTDA) justified the need to contract for personal and miscellaneous services. Another objective was to determine whether OTDA 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 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 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 December 21, 2009, OTDA had 245 State-funded Service Contracts valued at \$847 million.

We found that OTDA did not justify the need for its new or renewed Service Contracts. For example, we reviewed a sample of 27 Service Contracts valued at \$270 million and found that OTDA did not have documented justification for these contracts. OTDA provided us with contract authorization forms for certain sampled contracts that indicated the reasons why the services were needed and included assertions that OTDA did not have staff available to perform such services. However, OTDA did not provide documentation, such as written analysis, to support these assertions. We believe that supporting documentation is necessary to adequately establish that OTDA had reached the correct conclusions about the need for contracted services.

OTDA did not provide documentation to support that it had reassessed all of its Service Contracts. Therefore, OTDA 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 March 24, 2010, OTDA could realize savings of more than \$15 million.

In response to our preliminary findings, OTDA officials stressed that management does discuss the necessity for contracting out for services and considers the availability of State employees to perform the work. However, OTDA did not provide support to show that these discussions and decisions had taken place.

Our report contains two recommendations for improving OTDA efforts to attain savings through justification and reassessment of Service Contracts. OTDA officials disagree with the substance of the findings and recommendations of our report. They believe their existing processes are in full compliance with governing bulletins.

This report, dated December 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 Office of Temporary and Disability Assistance (OTDA) oversees a range of State programs for low-income residents, and provides guidance and support to local departments of social services in the administration of those programs. OTDA operates 18 major programs administered by 58 social service districts in the state to provide services to consumers either directly or through voluntary agencies. Several examples of these major programs are Temporary Assistance for Needy Families (TANF), Safety Net and Food Stamps. To help achieve its mission, OTDA enters into personal and miscellaneous service contracts (Service Contracts) with third party contractors which either provide program services on OTDA's behalf or provide support services to OTDA. According to its records, OTDA had 245 active Service contracts with a total value of more than \$847 million during the period April 1, 2006 through December 21, 2009. These contracts were almost exclusively for information technology related services such as data processing, computer programming, and document imaging.

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 the end of our audit fieldwork in 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 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, under B-1178, agencies are required to scrutinize spending for contractual services among several 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 service 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 during the time of our audit, 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 OTDA justified the need for its contracted services and the decision to contract out for personal and miscellaneous services (Service Contracts). Another objective was to determine whether OTDA had reassessed Service Contracts to identify what services can be deferred, eliminated or reduced to help cope with the State's fiscal challenges. 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 audit contracts for commodities or capital construction. Our audit period was from April 1, 2006 through June 14, 2010.

To achieve our objectives, we interviewed OTDA personnel, and reviewed contracts and other supporting documentation provided by OTDA. We also reviewed relevant State laws, the Order and Budget Bulletins. We selected a judgmental sample of 27 Service Contracts totaling \$270 million from the 245 active Service contracts during our audit period. We selected our sample from service contracts over \$50,000. The selection included contracts for information technology services such as data processing, computer programming and document imaging.

We conducted our 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 the 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

This 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 OTDA officials for their review and comment. Their comments were considered in preparing this final report and are included in their entirety at the end of this report. OTDA officials disagree with the substance of the findings and recommendations of our report. They believe their existing processes are in full compliance with governing bulletins.

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 Temporary and Disability Assistance 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, Dick Gerard, Mark Radley, and Richard Canfield.

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Audit Findings and Recommendations

Justification of Service Contracts

We reviewed the available documentation for the 27 Service Contracts to determine whether the need for the contracted services and the decision to contract out was justified with supporting documentation. We found that OTDA was not able to demonstrate that it had formally evaluated and justified the need for any of the selected contracts. These contracts involved areas such as information technology, data processing, computer programming and document imaging. OTDA provided us with contract authorization forms for our sampled contracts that in some cases indicated the reasons why the services were needed, and included assertions that OTDA did not have staff available to perform such services. However, OTDA did not provide documentation, such as written analysis, 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 OTDA's conclusions and that opportunities and options for cost savings have been fully considered.

Reassessment of Personal and Miscellaneous Service Contracts

Based upon our review of OTDA's efforts to scrutinize Service Contract spending, we believe additional savings opportunities may be possible. We found that OTDA did not document that it performed the periodic reviews required by the Division of the Budget (DOB), nor has it documented that it performed a comprehensive assessment of all existing Service Contracts to prioritize their importance or determine whether any can be deferred, eliminated or reduced to generate cost savings. We recommend that OTDA comply with the Bulletins issued by DOB and document that it performed the required top-to-bottom reviews for all of its Service Contracts.

As of March 24, 2010, OTDA had expended \$156 million of the \$295 million total value of its existing Service Contracts; leaving almost \$139 million left to be spent. If OTDA officials could achieve an 11 percent spending reduction on the remaining unspent balance of these contracts, as it did with its other budgeted costs in 2008 and 2009, it could realize more than \$15 million in 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



NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NEW YORK 12243-0001

David A. Paterson
Governor

November 12, 2010

Frank Patone, CPA
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, NY 10038

Re: Office of the State Comptroller's Draft
Audit Report (2009-S-101) regarding
Contracts for Personal and Miscellaneous
Services

Dear Mr. Patone:

As requested, the New York State Office of Temporary and Disability Assistance (OTDA) has reviewed the above-mentioned draft audit report and offers the following responses to the report recommendations.

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.

Response - Recommendation 1:

OTDA management has communicated, and will continue to communicate, to appropriate staff the requirements for supporting Service Contracts. OTDA has complied with the requirements of each of the Division of Budget (DOB) bulletins cited in the report to the satisfaction of DOB and will continue to properly justify the need for all service contracts.

As part of its ongoing efforts in this area, OTDA continues to assess and enhance its rigorous pre-clearance and post-award contract justification processes. For example, OTDA has already supplemented its contractual internal pre-clearance and post-award document (BCM-001) to

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require a more robust justification of need. The agency's justification process will continue to require approvals by OTDA's General Counsel, the program area Deputy Commissioner, the Deputy Commissioner of Operations, the OTDA Budget Director, the Equal Opportunity and Diversity/ MWBE Director and the Commissioner or Acting Commissioner. The vigorous review required under the BCM-001 process eliminates inadequately justified personal and miscellaneous services contract procurements from consideration.

Additionally, a second OTDA internal form, the BCM-003, is used for information technology (IT) staff augmentation consultant pre-bid approvals. BCM-003 forms require justification for contracting out for consultant services. The draft audit report erroneously concluded that the BCM-003 justifications were lacking adequate analysis. OTDA maintains that the BCM-003 justification cited in the draft report "no State staff available to perform the required IT services" accurately rationalized the need to hire consultants. As proof of this, OTDA was recently granted authority by Civil Service to hire former contractors into State employee IT positions since no current State staff were available. As a result of the insourcing initiative, 15 personal and miscellaneous services contracts were terminated.

It must be understood that, in total, OTDA's personal and miscellaneous services contracts are subjected to an overwhelming amount of scrutiny prior to approval. Internal and external organizations examine the contracts for many factors, including necessity. Page 9 of the OSC draft report states that OTDA's current Service Contracts "are almost exclusively for information technology related services."

To illustrate the comprehensive controls in place for these contracts, the following approvals are required before an OTDA information technology contract becomes effective:

- OTDA's aforementioned BCM-001 and BCM-003 processes,
- DOB's B-1184 approval process (both before starting the procurement and after contract award),
- CIO/ OFT review and approval (both before starting the procurement and after contract award),
- Federal oversight agency review and approval, where applicable (both before starting the procurement and after contract award),
- B-1187 review for consulting contracts, and
- Attorney General and State Comptroller reviews and approvals.

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.

Response - Recommendation 2:

OTDA will continue to periodically assess its contracts for savings opportunities per applicable DOB standards. As shown above, OTDA has already been quite successful in this area.

Although OTDA agrees that efficiencies should be considered whenever possible in the current fiscal climate, we strongly disagree with the report's unsubstantiated premise that a periodic reassessment of service contracts could result in the realization of savings in excess of \$15 million. As the sampled contracts were subject to DOB's initial justification standards and met

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the recurring reassessments required by each of the OSC-cited bulletins to DOB's satisfaction, the arbitrary potential savings amount given by OSC has no basis in fact. A periodic assessment of service contracts would reveal restricted opportunities for savings as many are authorized by the state budget and others are mandated by the state or federal government. Also, as described above, personal and miscellaneous services contracts are subject to an overwhelming amount of scrutiny prior to and after their approval and are for defined time periods, casting further doubt on OSC's unsupported numbers. OTDA strenuously objects to OSC including such an illusory number in an audit report.

In summary, OTDA disagrees with the substance and tenor of this audit report, its findings and its recommendations. OTDA has uniformly complied with the reporting and documentation requirements in DOB Bulletins H-1025, B-1178, B-1183, B-1184 and B-1187 to the satisfaction of DOB. OSC's draft audit report does not cite any specific conditions found to be in violation of these bulletins, nor does it cite any specific criteria that OTDA has failed to meet. OTDA will continue its longstanding efforts to seek cost effective ways to identify and implement savings to ensure our critical services are provided most efficiently.

*
Comment

Thank you for the opportunity to comment on the draft report.

Sincerely,



Kevin Kehmna, Director
Bureau of Audit and Quality Improvement

cc: Elizabeth Berlin

* See State Comptroller's Comment on page 19.

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State Comptroller's Comment

Our examination showed OTDA did not adequately document its compliance with all relevant directives. Current fiscal challenges mean that agencies must do more than simply meet minimum requirements. OTDA should strive for additional savings by routinely examining and reassessing all Service contracts and preparing sufficient supporting documentation.