



New York State Department of Transportation

Contracts for Personal and Miscellaneous Services

2009-S-66



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

November 18, 2010

Mr. Stanley Gee
Acting Commissioner
New York State Department of Transportation
50 Wolf Road
Albany, New York 12232

Dear Mr. Gee:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of *Contracts for Personal and Miscellaneous Services*. This audit was performed pursuant to the State Comptroller's authority 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 Department of Transportation (Department) justified the need to contract for personal and miscellaneous services. Another objective was to determine whether the Department periodically reassessed personal and miscellaneous service contracts to identify what work could be deferred, eliminated, or reduced to save State funds.

Audit Results - Summary

Various directives from the New York State Division of the Budget and the Governor's Office include the need for State agencies to justify their personal and miscellaneous service contracts (Service Contracts) and to reassess whether they can be deferred, eliminated, or reduced to help achieve overall budgetary reductions and related cost savings. These directives have added significance because in August of 2008 the Governor required State agencies to achieve spending reductions of 10.35 percent for State fiscal year 2008-09. For the period April 1, 2006 through November 12, 2009, the Department had 1,231 active Service Contracts (excluding construction services and agreements with municipalities for snow and ice control and arterial maintenance) totaling \$2.7 billion.

We found that the Department has not justified the need for all of its State-funded Service Contracts. For example, we reviewed a sample of 45 Department Service Contracts valued at \$116.7 million. These contracts were generally for consultant design engineers and construction inspection and management services. We found that the Department justified the need for 26 contracts totaling \$48.7 million. However, there was no documentation to justify the remaining 19 contracts totaling about \$68 million. Department officials explained that, due to staff cuts over the years, they presently lack a sufficient number of staff with expertise to do the contracted work. In addition, they commented that the Department did not have authorization to fill positions, and, therefore, they had no alternative except to contract for the work. However, officials also told us that, in the long term, costs would be less if the Department could reduce reliance on contractors and could add and use in-house staff to complete work. We recommend that a documented analysis be performed to fully support the Department's conclusions.

During the 2008-09 fiscal year, the Department planned to reduce State-funded Service Contract spending by \$9 million. Department records show 21 State-funded Service Contracts

were suspended for savings of about \$3 million. However, the Department did not provide documentation to support that it had cut Service Contracts to achieve the remaining \$6 million of savings, or that it had reviewed all current and planned State-funded Service Contracts, as part of its budget reduction efforts. Therefore, the Department may be missing opportunities to further reduce costs and save State funds. For example, our sample of 45 contracts identified 19 contracts that were not justified, but have an unspent balance of \$35.7 million. If the Department could cut these contracts by just the 10.35 percent savings goal for overall budgetary reductions as set by the Governor, it could potentially save about \$3.5 million over the remaining term of the contracts.

We made two recommendations for improving the Department's administration and monitoring of Service Contracts. Department officials generally agreed with our recommendations.

This report dated November 18, 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
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Introduction

Background

The mission of the Department is to ensure a safe, efficient, balanced and environmentally sound transportation system for those who live, work and travel in New York State. The Department maintains and improves more than 38,000 State highway lane miles and over 7,500 bridges. In addition, the Department partially funds locally-operated transit systems, local government highway and bridge construction, and rail, airport, and canal programs. To carry out these functions and meet its mission, the Department enters into personal and miscellaneous service contracts (Service Contracts).

According to Department records, it had 1,231 active Service Contracts (excluding construction services and agreements with municipalities for snow and ice control and arterial maintenance) totaling \$2.7 billion during the period April 1, 2006 through November 12, 2009. The 1,231 Service Contracts were for federally-funded services such as construction design, construction inspection, bridge inspection, and information technology, as well as services that are typically State-funded such as transportation maintenance (e.g., guard rail repair, culvert cleaning), security, roadside emergency assistance, and janitorial.

The Department spent an average of \$118.4 million annually on Service Contracts during State fiscal years 2007-08 and 2008-09. The Department did not provide data on the funding source for each of its contracts. Therefore, the amount of State funding for the 1,231 Service Contracts is not readily known.

The following directives issued from the New York State Division of the Budget 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 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, the Governor directed that State agencies evaluate all programs and operations to identify opportunities for eliminating 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 to avoid having a disproportionate impact on either, and to ensure recurring savings in both categories.

Audit Scope and Methodology

One objective of our audit was to determine whether the Department justified the need to contract for personal and miscellaneous services (Service Contracts). Another objective was to determine whether the Department periodically reassessed Service Contracts to identify what work could be deferred, eliminated or reduced to save State funds. For the purposes of our audit, Service Contracts are those in which the majority of the costs associated with the contracts are for services and labor. We did not include contracts for commodities, capital construction, or agreements with municipalities for snow and ice control and arterial

maintenance. Our audit period was April 1, 2006 through November 12, 2009.

To achieve our objectives, we interviewed Department personnel, and reviewed contracts and other supporting documentation provided by the Department. We also reviewed relevant State laws, the Order and Budget Bulletins. We selected a judgmental sample of 45 Service Contracts totaling \$116.7 million that were primarily State-funded (50 percent or higher) from the population of 1,231 contracts active during our audit period. We based our selection on the type of service, the likelihood the contract was primarily State-funded, and dollar amount. We selected contracts that were at least \$200,000. The selection includes contracts for information technology, engineering, highway maintenance, and other services. For this audit, we determined if documentation and analysis supported the need for the contracted service and demonstrated that the service could not be done by existing employees to save State funds.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

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 Department officials for their review and comment. Their comments were considered in preparing this final audit report and are included at the end of this report. State

Comptroller's comments to the Departments response are also attached at the end of this report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Transportation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

**Contributors to
the Report**

Major contributors to this report include Carmen Maldonado, Steve Goss, Roger Mazula, Wayne Bolton, Robert Horn, and Michael Sulem.

Audit Findings and Recommendations

Justification of Service Contracts

We selected a sample of 45 State-funded Service Contracts and reviewed available documentation to determine whether the need for the services and the decision to contract for services was justified with supporting documentation. We found that the Department justified the need for 26 contracts totaling \$48.9 million. However, the Department did not have documentation showing that, prior to entering into the remaining 19 contracts, totaling about \$68 million; it had formally evaluated the justification for them. These contracts involve highway maintenance services (tree cutting, ditch maintenance, culvert cleaning, traffic signal maintenance, and guiderail repair), roadside assistance services (HELP truck), traffic counting, hazardous waste removal and testing, training, information technology, and telecommunication advisory services.

Department officials told us they assign work to Department staff until they are fully utilized, and then additional work is done under contract. During our audit, Department managers prepared an explanation of why the services were needed for 17 of the 19 contracts. The main reason given is that staff cuts over the years have resulted in a lack of enough in-house staff and in some cases, expertise, to fulfill its workload demand. Another reason given is the lack of necessary equipment. Due to the lack of authorization to fill positions, Department officials said they had no other alternative than to contract for certain services. Some services are now done by a mix of Department staff and contractors, as shown in the following contracts in our sample that were not justified with documentation:

- two contracts totaling \$11.9 million to provide roadside assistance;
- three contracts totaling \$14.6 million for tree cutting;
- one contract totaling \$5.8 million to maintain traffic signals; and
- three contracts totaling \$3.6 million for ditch and culvert maintenance.

Some of the contracts are term contracts for use on an as-needed basis, and the full contract amount may not be spent. For example, only \$687,000 of the \$14.6 million for the three tree-cutting contracts had been expended even though the contracts were to expire in June 2010. In addition, Department officials told us three technology projects were contracted for about \$14.8 million because they did not have staff with

the necessary expertise. At the time of our audit, the unspent amount was \$7.1 million.

For three contracts, Department staff told us it would be less costly or about the same cost if they contracted with a consultant, compared with using Department staff. However, the Department did not have a cost-benefit analysis for these contracts. As a result, while one contract for a telecommunications advisory consultant was to reduce telecommunications costs by consolidating accounts and eliminating waste, there was no analysis showing that anticipated savings would cover the \$360,000 contract cost. Additionally, the cost of performing the work with a Department employee was not included in the justification. In another example, the Department contracted out for miscellaneous environmental permitting support service for \$3 million due to the lack of in-house staff. However, the Department provided no documentation to support the lack of in-house staff or to compare the cost of the contract with the cost to hire necessary in-house staff.

While there are times when it is necessary to hire outside service providers, even in these cases, a documented analysis is important to fully support that the Department's conclusions are correct and that opportunities and options for cost savings have been fully evaluated. In the absence of such analyses, we question whether contracting out for certain services was necessary and cost effective, especially for some services that are done by in-house staff such as traffic counting, traffic signal maintenance, roadside assistance, and various highway maintenance tasks. In this regard, Department staff told us it would be less costly in the long term to use additional in-house staff for signal maintenance than to contract out for such services.

**Reassessment
of Service
Contracts**

Based upon our review of the Department's efforts to scrutinize Service Contract spending, we believe additional savings opportunities may be possible. During the two years ended March 31, 2009, the Department spent an average of \$118.4 million annually on Service Contracts including both federal and State funds. During the 2008-09 fiscal year, the Department planned to reduce State-funded Service Contract spending by \$9 million. Department records show it suspended 21 State-funded Service Contracts during 2008-09, for savings of about \$3 million. However, the Department did not provide documentation to support that it had cut Service Contracts to achieve the remaining \$6 million of savings, or that it had reviewed all current and planned State-funded Service Contracts as part of its budget reduction efforts. Such an analysis is essential to ensure that management has identified all opportunities where the scope of contract work may be deferred, eliminated or reduced to generate cost savings.

We also found the Department did not identify what recurring savings it would achieve in fiscal years 2009-10 and 2010-11, including what Service Contracts would be impacted. Near the end of our fieldwork, the Governor again called for agencies to reduce spending in future fiscal years; this time by more than 11 percent. We previously noted that our sample identified 19 contracts that were not justified, but had an unspent balance of \$35.7 million as of May 4, 2010. While management may not be able to eliminate these contracts, it is possible that some could be scaled back to achieve additional savings. If the Department cut these contracts by just the 10.35 percent savings goal for overall budgetary reductions as set by the Governor, it could potentially save about \$3.5 million over the remaining term of the contracts.

In response to our preliminary findings, Department officials indicated they prefer to use in-house staff, and use consultants only when necessary. They do not believe that adding steps to further justify contracts will improve their decisions or reduce the use of consultants, but will require additional staff resources. They also indicate that there are legal constraints on the ability to cancel contracts.

In addition, Department officials told us they annually review Service Contracts to determine if the contracts are still necessary, and that numerous meetings in the Department's regional offices and the Main Office included discussion of contracts and which contracts were cut and deferred. However, they could not provide documentation such as meeting minutes, or records identifying the Service Contracts discussed and the decisions made on each contract. Without such records, the Department could not demonstrate that all State-funded Service Contracts were reviewed. Given the State's fiscal crisis, Department officials should reassess all State-funded Service Contracts. If officials conduct a top-to-bottom review of every current and planned contract, it is likely they will find some State-funded services that could be reduced to achieve savings.

- Recommendations**
1. 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 reassess all Service Contracts periodically to identify opportunities to suspend, eliminate, reduce or bring them in-house, and to document their determinations.

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Agency Comments



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232
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STANLEY GEE
ACTING COMMISSIONER

DAVID A. PATERSON
GOVERNOR

October 13, 2010

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

Re: Draft Audit Report 2009-S-66
Contracts for Personal and Miscellaneous Services

Dear Ms. Maldonado,

Thank you for the opportunity to respond to the subject report. Below is the New York State Department of Transportation's (NYSDOT) response.

Report Comments

Page 7, Paragraph 3. The report's primary conclusion is that NYSDOT has not justified the need for all of its State-funded Service Contracts. This conclusion is based on the auditors' observation that there was "no documentation" to justify 19 of the 45 contracts sampled.

NYSDOT questions the accuracy of this observation based on looking further at a small sample of the 19 exceptions referenced in the report. Contract C003401, which had the most expenditure at the time of the audit (\$4.9 million based on information supplied by the Office of the State Comptroller), was for traffic signal maintenance services in NYSDOT's Region 8. NYSDOT submitted a request (commonly known as an Attachment B) which included a justification to the Division of the Budget in March 2010 to extend this contract. Similarly, NYSDOT submitted in the same month an Attachment B request for Contract C105691, valued at \$4.7 million, to extend the contract. These contract extension requests were reviewed and approved by both the Division of the Budget and the Office of the State Comptroller, apparently meeting the justification requirements established by these organizations. Since these reported exceptions included a satisfactory justification of need, NYSDOT questions how many of the other reported exceptions also had a documented justification.

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Comment
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*See State Comptroller's Comments, page 21.

Nonetheless, NYSDOT acknowledges that for some of these contracts it may not have documented its reevaluation of their need. NYSDOT conveys two points to put this finding in proper perspective.

- When each of these contracts was established, NYSDOT justified its need and the Office of the State Comptroller (OSC) approved the contracts.
- NYSDOT did reevaluate the necessity of its contracts and the process used was described to the OSC auditors. As was pointed out to OSC audit staff, the nature of NYSDOT's contracted services (e.g. tree removal, guide rail repair and maintenance, etc.) and the need for them was well understood by staff involved with the reevaluation effort. This understanding was relied upon to determine those \$3 million in contracts that NYSDOT suspended. Because staff had an understanding of contract needs, there was no concerted effort to individually document re-evaluation of each contract's needs, nor do any of the State Budget Bulletins include a requirement to do so.

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Comment
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Page 7, Paragraph 4. The report states that NYSDOT did not implement a \$9 million reduction in State-funded Service Contracts for the 2008-09 fiscal year. The report pointed out that NYSDOT suspended 21 existing State-funded Service Contracts for a savings of \$3 million but that NYSDOT could not provide documentation to support that it cut an additional \$6 million in service contracts. As NYSDOT staff conveyed to the auditors, these additional savings were achieved by deferring establishment of new engineering services contracts rather than cutting existing contracts; accordingly, records of prospective contracts did not exist.

Staff further conveyed that NYSDOT did achieve its planned \$9 million savings in contractual services. Prior to State Budget Bulletin B-1183, the NYSDOT Engineering Division gave NYSDOT regional offices budgetary allocations for contractual services. After the State Budget Bulletin B-1183 was issued, those regions received reduced budgets and were forced to constrain their obligations for new contracts to the reduced levels. To determine that NYSDOT properly implemented this budget reduction, the auditors could ask the Division of the Budget, which had mandated the reduction and ensured NYSDOT's compliance.

*
Comment
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Recommendations

Recommendation 1: 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: NYSDOT believes its justifications have been adequate in the past but staff agree to reinforce the recommended requirement with agency managers and to have contracts staff ensure that such justifications are provided as necessary.

Recommendation 2: Instruct managers to reassess all Service Contracts periodically to identify opportunities to suspend, eliminate, reduce, or bring them in-house, and to document their determinations.

*See State Comptroller's Comments, page 21.

Response: NYSDOT agrees to implement this recommendation. The requirements established by the Division of the Budget in Budget Bulletins B-1184 and B-1187 require contract assessments and the Department is following those mandates.

Should you need further information, please contact Michael McCarthy, Administrative Services Division Director, at 518-457-6300.

Sincerely,



Stanley Gee
Acting Commissioner

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State Comptroller's Comments

1. The Comptroller's role in approving State contracts focuses on ensuring agency compliance with the relevant provisions of the State Finance Law and other regulatory requirements designated to ensure a fair procurement and the availability of funding, not on whether the decision to contract out for services is justified and appropriate. Similarly, the Attachment B requests submitted to the Division of the Budget do not always include detailed documentation demonstrating why the agency must contract out for the services. Without such documentation at the agency level, there is less assurance that all available alternatives have been considered.

2. During our audit fieldwork, we asked Department officials for evidence showing how they reduced these regional budget allocations. Department officials did not provide the documentation we requested.