

THOMAS P. DiNAPOLI
COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

GABRIEL F. DEYO
DEPUTY COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY
Tel: (518) 474-4037 Fax: (518) 486-6479

July 2016

Ralph Ottuso, Chairman
Members of the County Board of Supervisors
Fulton County Board of Supervisors
County Office Building, Room 205
223 West Main Street
Johnstown, NY 12095

Report Number: S9-15-29

Dear Chairman Ottuso and Members of the County Board of Supervisors:

The Office of the State Comptroller works to help county officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support county operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of six counties throughout New York State. The objective of our audit was to determine if counties are monitoring community-based agencies to ensure that services provided and payments made are in accordance with contractual agreements. We included Fulton County (County) in this audit. Within the scope of this audit, we examined the procedures of the County and various contracts in place for the period January 1 through December 31, 2013. Following is a report of our audit of the County. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This report of examination letter contains our findings and recommendations specific to the County. We discussed the audit results and recommendations with County officials and considered their comments, which appear in Appendix A, in preparing this report. County Officials generally agreed with our recommendations and indicated they have taken or plan to take correction action. At the completion of our audit of the six counties, we prepared a global report that summarizes the significant issues we identified at all the municipalities audited.

Summary of Findings

We found the County could do more to ensure each community-based agency service contractor¹ provides services in accordance with the contract terms.

To determine if the County was effectively monitoring its community-based agency service contracts, we sampled five contracts totaling \$459,428. We found the program managers (managers) do not always comply with the Department of Social Services' (Department) contract monitoring expectations. While three contracts contain various reporting requirements and each contractor provided the required reports, managers do not use the reports to monitor the contractors.

For example, one contract included six performance measures and, in contrast to the Department's expectations, the manager did not use the contractor's progress reports to determine if the contractor met these measures. Two contracts totaling \$72,500 had no reporting requirements and four contracts totaling \$280,832 did not contain performance measures. When managers do not monitor contracts' performance measures or when contracts do not contain performance measures, there is less assurance that the Department is receiving the contracted services or that programs are operating as intended.

Although the New York State Social Services Law (SSL) requires counties to use performance-based contracts when contracting for work activities, if practicable, the County does not use them. Officials said performance-based contracts are not practicable because contractors were not meeting expectations when they used performance-based contracting.

Background and Methodology

The County has a population of approximately 54,000 residents and is governed by a 20-member Board of Supervisors (Board). The Chairman of the Board is the County's chief executive officer and is responsible for oversight of County operations. The County's 2014 budget totaled \$78.3 million and included the Department's budget of \$28.3 million. A Commissioner oversees the general management of the Department and enforcement of SSL.

The Department is responsible for providing temporary help to eligible individuals and families with financial and social service needs to assist them with leading safe, healthy and independent lives. The Department provides and manages a wide range of social welfare programs. To accomplish its mission, the Department enters into contracts with community-based agencies to provide services that enhance the ability of families to live together, enable individuals to remain in their homes, minimize the risk of abuse or neglect and provide for specialized care in residential settings when necessary. SSL requires the Department, when contracting for work activities, to use performance-based contracts, when practicable. The Department has 31 service contracts totaling \$5.5 million.² Three program managers monitor these contracts.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). Such standards require that we plan and conduct our audit to adequately assess those operations within our audit scope. Further, those standards require that we understand the

¹ Contractor that provides services to a client of the County's Department of Social Services

² As of December 31, 2013

management controls and those laws, rules and regulations that are relevant to the operations included in our scope. We believe that our audit provides a reasonable basis for the findings, conclusions and recommendations contained in this report. More information on such standards and the methodology used in performing this audit are included in Appendix B of this report.

Audit Results

Contract Monitoring – Contract monitoring is essential to ensure that services provided are consistent with the contract terms. The three managers responsible for monitoring contracts should be familiar with and have copies of the contracts they monitor and should adhere to the Departments’ contract monitoring practices. The managers should hold each contractor accountable to the terms of their contract, such as providing agreed-upon reports and evaluating services provided. The managers should also ensure that information reported by the contractor meets the performance outcomes outlined in the contract. In addition, if a contractor self-reports contract performance data, the managers should verify the contractor’s information.

The Department’s management expects its managers to review appropriate supporting documentation to ensure that they receive all required progress reports, the contractor submits payment vouchers in accordance with contract terms, billed services have been provided and the contractors accurately report self-reported performance outcomes.

To determine if managers were monitoring the contractors in accordance with the Department’s direction, we reviewed five contracts valued at \$459,428. For each contract we determined if the contractor submitted all required progress reports; determined if the contractor met performance expectations; examined the Department’s documentation, when possible, to confirm services were provided; examined and recalculated the contractor’s payment vouchers to confirm they were prepared in accordance with contract terms; and confirmed the Department reviewed and approved each voucher for payment.

Four contracts totaling \$280,832 did not contain performance measures. One contract, for an intensive youth home, contained six performance measures, but the manager, contrary to the Department’s expectations, did not verify or use information provided by the contractor to determine if the contracted measures were achieved. For example, the contract required 90 percent of all youth served who have not been the subject of an indicated report of abuse or maltreatment will not become the subject of an indicated report as of the time of discharge. Although we tried to determine if the contractors met the defined performance measures, the available records were not sufficient to do so.

Three contracts also contained various reporting requirements. While the contractors provided the required reports, managers did not use them to monitor the contractors. Two contracts with a combined value of \$72,500 had no reporting requirements in their contracts.

The Department does not have written policies and procedures to guide the managers in monitoring contracts. Department management orally conveyed the contract monitoring policies and procedures. Having policies and procedures that are not formalized leads to misunderstandings and inconsistent application of the policies and procedures. When managers do not effectively monitor contracts, there is less assurance that the Department is receiving the contracted services.

Performance Contracting – The Department is required by SSL to use performance-based contracting, if practicable, when contracting for work activities.³ Although not defined in the SSL, performance-based contracting generally includes a clear definition of a series of objectives and indicators by which to measure contractor performance, collection of data on the performance indicators and consequences for the contractor based on performance (e.g., agreed upon amounts of consideration for meeting or exceeding indicators, or termination of the contract or reduced amounts, as set forth in the agreement, for not meeting or exceeding those indicators). Performance-based contracting methods are intended to ensure that required performance quality levels are achieved and that the consideration is related to the degree that services performed meet or exceed contract standards.

Performance-based contracts should:

- Describe the requirements in terms of results required rather than the methods of performance of the work;
- Use measurable performance standards;
- Specify procedures for reductions of fees or for reduction to the price of a fixed-price contract when services are not performed or do not meet contract requirements; and
- Include performance incentives where appropriate.

The Department does not use performance-based contracting. While we found the Department incorporated performance measures in one of the contracts we reviewed, the contract does not contain incentives if the contractor meets or exceeds performance expectations or penalties if the contractor fails to meet minimum contract performance. For example, the County entered into a contract that requires 90 percent of all youth served who have not been the subject of an indicated report of abuse or maltreatment will not become the subject of an indicated report as of the time of discharge. However, the contract lacks reward and sanction provisions for good and poor performance, respectively.

Officials said performance-based contracts are not practical because when performance-based contracting was used, contractors were not meeting expectations. Officials added that since they have dropped performance-based contracting, the contractors have exceeded past performance outcomes and have exceeded expectations. Because the Department does not follow performance-based contracting, it may be paying for services that are not effective.

Recommendations

Department officials should:

1. Develop and implement written contract monitoring policies and procedures and ensure managers follow them.
2. Use performance-based contracting, when practicable. If the County does not use performance-based contracting techniques, consider adding contractual language to service contracts that detail recourse actions the County may take when performance measures are not met.

³ Paid or unpaid activities that help improve an individual's employability

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. The Board should make the CAP available for public review in the Clerk's office.

We thank County officials and staff for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

RESPONSE FROM COUNTY OFFICIALS

The County officials' response to this audit can be found on the following pages.

The response letter contains reference to a "Contract Monitoring Policy and Procedure." Because the response letter sufficiently explains the relevance of this document, the attachment is not included with the County's response.

County of Fulton
COUNTY BUILDING
JOHNSTOWN, NEW YORK 12095

Board of Supervisors

Telephone 518-736-5540

Fax: 518-762-0224

11 January 2016

Ms. Ann C. Singer, Chief Examiner
State Office Building, Suite 1702
44 Hawley Street
Binghamton, NY 13901-4417

Dear Ms. Singer:

I am writing as a follow-up to the recent exit conference with Comptrollers representatives regarding preliminary draft findings on Service Contracting in the Fulton County Department of Social Services. Your examination team was courteous and efficient in their review and this letter constitutes the County's Audit Response to the draft audit and the County's Corrective Action Plan.

The draft Audit identified two (2) key recommendations, stating that Department officials should:


1. Develop and implement written contract monitoring policies and procedures and ensure managers follow them.
2. Use performance-based contracting, when practicable. If the County does not use performance-based contracting techniques, consider adding contractual language to service contracts that detail recourse actions the County may take when performance measures are not met.

The draft Audit Report was concise and the County understands the recommendations and their value in administering professional service contracts.

Ms. Ann Singer
Page 2
11 January 2016

The Commissioner of Social Services has taken prompt action in response to the Comptroller's recommendations. Future contract services will be evaluated, and when appropriate, performance-based measurements will be incorporated into contracts and agreements with vendors and/or professional service contractors. The Department has developed a new policy "Contract Monitoring Policy and Procedure" (attached) which includes implementation of a Contract Monitor system. The new policy clearly delineates staff responsibilities and incorporates a Contract Monitoring Form for each such agreement. This Corrective Action Plan will ensure that each contract has individual monitoring and follow-up if conditions are not met or measures are not reached. Please include this written response letter in the final Audit Report.

Sincerely,


Charles Potter
Chairman of the Board

CP:vl
Attachment

cc: Division of Local Government and School Accountability, OSC
Richard Argotsinger, Chairman, Committee on Finance
Alice Kuntzsch, Budget Director/County Auditor
Sheryda Cooper, Commissioner, DSS

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

To complete our objective, we interviewed County and Department officials and identified practices used to monitor Department contracts to determine whether the County is effectively monitoring these contracts. We performed procedures that include the following steps:

- We interviewed key officials to identify the Department's community-based agency service contract monitoring process, gain an understanding of the components of a typical Department contract, establish how service providers invoiced the County for services and determine how those invoices were reviewed and payments were made. Further, we obtained an understanding of how the contractual agreements were monitored.
- We obtained a list of service-based contracts and verified that list to the Department's budget and accounting records. We judgmentally selected two employment-related contracts and three additional contracts. We considered the contract values and funding sources when selecting contracts to review.
- We obtained and reviewed the five contracts to determine the terms of the agreement.
- We obtained and reviewed the invoices for each contract that were paid between January 1, 2013 and December 31, 2013 to determine if payments were made in accordance with the contract and the Department's policy.
- We obtained and reviewed the performance reports submitted to the Department by the service providers to evaluate whether contractual requirements were met.
- We interviewed the managers to determine how each one monitors whether the service providers are complying with contractual obligations.
- We reviewed invoices to determine whether the manager was approving invoices for payment, the amount billed matched the amount paid by the Department and the supporting documentation substantiated the amount billed.
- We traced a sample of payments from the invoices to the general ledger.

We conducted this performance audit in accordance with GAGAS. 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.