

**New Jersey State Legislature
Office of Legislative Services
Office of the State Auditor**

**Department of the Treasury
Division of Purchase and Property
Temporary Staffing Services Contract**

July 1, 2013 to May 31, 2016

**Stephen M. Eells
State Auditor**

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New Jersey State Legislature

OFFICE OF LEGISLATIVE SERVICES

OFFICE OF THE STATE AUDITOR
125 SOUTH WARREN STREET
PO BOX 067
TRENTON NJ 08625-0067

PERI A. HOROWITZ
Executive Director
(609) 847-3901

OFFICE OF THE STATE AUDITOR
(609) 847-3470
FAX (609) 633-0834

STEPHEN M. ELLS
State Auditor

DAVID J. KASCHAK
Assistant State Auditor

JOHN J. TERMYNA
Assistant State Auditor

The Honorable Chris Christie
Governor of New Jersey

The Honorable Stephen M. Sweeney
President of the Senate

The Honorable Vincent Prieto
Speaker of the General Assembly

Ms. Peri A. Horowitz
Executive Director
Office of Legislative Services

Enclosed is our report on the audit of the Department of the Treasury, Division of Purchase and Property, Temporary Staffing Services Contract for the period of July 1, 2013 to May 31, 2016. If you would like a personal briefing, please call me at (609) 847-3470.

A handwritten signature in black ink, appearing to read "Stephen M. Eells".

Stephen M. Eells
State Auditor
February 28, 2017

Table of Contents

| | |
|--|----|
| Scope..... | 1 |
| Objectives | 1 |
| Methodology | 1 |
| Conclusions..... | 2 |
| Findings and Recommendations | |
| Analysis of Cooperative Agreement Cost Effectiveness | 3 |
| Affordable Care Act..... | 3 |
| Observation | |
| Temporary Staffing Services | 4 |
| Auditee Response..... | 6 |
| Auditor’s Follow-up Response | 10 |

Scope

We have completed an audit of the Department of the Treasury, Division of Purchase and Property, Temporary Staffing Services Contract for the period July 1, 2013 to May 31, 2016. Our audit focused on the statewide contract for temporary staffing services procured by the Department of the Treasury's Division of Purchase and Property (division). The state employed approximately 1,500 individuals under the temporary staffing services contract in fiscal year 2015, with expenditures totaling \$31 million. During calendar year 2015, the hourly rate being paid by state agencies ranged from \$12 to \$118, including the contracted vendor's markup rate of 19 to 72 percent.

The primary mission of the division is to professionally and ethically procure the best valued products and services in a timely and cost effective manner in accordance with state laws and regulations to enable client agencies to meet their objectives. In accordance with New Jersey Statute, the Director of the Division of Purchase and Property may enter into cooperative procurement agreements with other states for the purchase of goods and services. Entering into an existing cooperative procurement agreement allows the division to forgo their own bidding process to save time and money.

In 2013, New Jersey entered into a cooperative procurement agreement with U.S. Communities and the contracted vendor for the purchase of temporary staffing services. U.S. Communities is a national government purchasing cooperative that provides government procurement resources and solutions to state government agencies. This cooperative procurement agreement replaced two expiring contracts, one which covered office and clerical titles and another that covered paralegal and legal secretarial titles for the state. This cooperative procurement agreement's original term was for three years with an extension option exercised through March 2017. A one-year extension option remains.

Objectives

The objectives of our audit were to determine whether financial transactions were related to the cooperative procurement agreement, were reasonable, and were recorded properly in the accounting systems. An additional objective was to determine whether the division complied with the New Jersey Administrative Code for cooperative procurement agreements.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. 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 the evidence obtained provides a

reasonable basis for our findings and conclusions based on our audit objectives.

In preparation for our testing, we studied legislation, the administrative code, and circular letters promulgated by the Department of the Treasury. Provisions we considered significant were documented and compliance with those requirements was verified by interview, and through our testing of financial transactions. We also read the contract, reviewed data files, and interviewed agency personnel to obtain an understanding of the cooperative procurement agreement and the internal controls.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions on our audit objectives. Sample populations were judgmentally selected for testing.

Conclusions

We found the financial transactions included in our testing were related to the cooperative procurement agreement, were recorded properly in the accounting systems, and were reasonable except for costs related to titles which were previously under contract. For these titles, the state paid an estimated \$4 million more during calendar year 2015. In making this determination, we found improvements are needed to ensure proper reimbursement of Affordable Care Act costs. We also found non-compliance with a provision of the New Jersey Administrative Code regarding the cost effectiveness of the cooperative procurement agreement. Additionally, we made an observation concerning temporary staffing services, including an opportunity for cost savings.

Analysis of Cooperative Agreement Cost Effectiveness

The cooperative procurement agreement did not yield cost savings.

New Jersey Administrative Code 17:12-1A-3 allows goods or services to be purchased through a contract awarded through a cooperative procurement agreement if the division determines this is the most cost-effective method of procurement. A cooperative procurement agreement was entered into replacing two expiring contracts for office and clerical titles and for paralegal and secretarial titles. The cooperative procurement agreement gave the various state agencies the ability to procure any title not only those from the two expiring contracts.

Before the agreement was approved, an analysis was performed showing that cost savings would be achieved by utilizing the agreement. We found this analysis, which was prepared by both the awarded contract vendor and the division, to be inadequate. A new proposed price list was not provided with the analysis for comparison to the expiring contracts, only a spreadsheet of unsupported information of potential cost savings was included. Our review of the amounts actually expended under the agreement during calendar year 2015 disclosed that it is costing an estimated \$4 million (28 percent) more than the division's initial analysis for the titles which were previously under contract.

Recommendation

When considering the use of cooperative procurement agreements in the future, we recommend the division comply with the Administrative Code and verify that such an agreement is the most cost-effective solution.



Affordable Care Act

Improvements are needed to ensure reimbursement of unneeded Affordable Care Act payments.

In response to requirements of the Affordable Care Act (ACA), a wage markup increase for every labor category in the cooperative procurement agreement was approved on June 25, 2015 because of the increased costs to the vendor. However, most temporary workers are not obtaining health care insurance through the vendor. The markup associated with temporary workers not receiving health care insurance through the vendor should be reimbursed to the state. The division did not adequately convey to using agencies that they should seek reimbursement for any unused ACA payments. We brought this to the division's attention and the vendor has agreed to reimburse the state \$302,000 for calendar year 2015 overpayments.

Recommendation

We recommend the division adequately convey to using agencies that they should accurately account for the number of temporary workers not receiving insurance through the vendor and seek reimbursement for these overpayments.

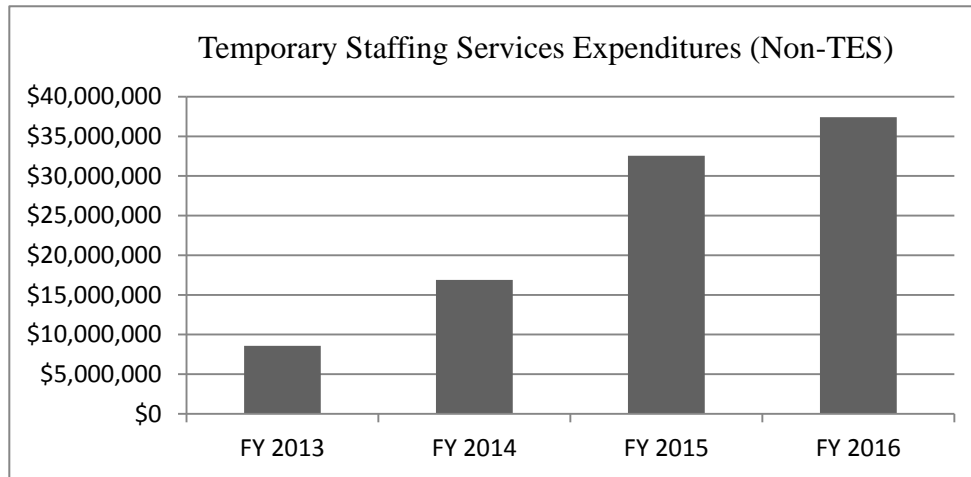


Observation

Temporary Staffing Services

The contracted services could pose a risk for circumvention of Civil Service hiring regulations, as well as concealing the employment of retirees prior to their bona fide retirement date.

While the state payroll has decreased by 4,700 employees since 2013, temporary staffing services expenditures have progressively increased since fiscal year 2013 as shown in the following chart.



The cooperative procurement agreement allows for the procuring of titles that are not specifically identified in the agreement. Titles can be easily added whenever a need arises. The vendor determines the title's competitive rate through the New Jersey Department of Labor and Workforce Development prevailing wage website. In addition, miscellaneous titles can be procured for any labor category, with hourly rates negotiated or determined by the state agency. The hourly rates include vendor markup rates which are generally higher for the miscellaneous titles. There are no restrictions or limitations stated in the cooperative procurement agreement regarding these positions. Our review determined \$13 million has been disbursed by the state for miscellaneous positions since the cooperative procurement agreement's inception in 2013.

State agencies have the option to hire state temporary employment services (TES) positions. However, job assignments are for an aggregate period of not more than six months in a 12-month period. There is no such limit with temporary employees hired through the cooperative procurement agreement. We identified 893 (non-TES) temporary employees working more than six months in a year, 300 of which did so in consecutive years. Agencies appear to be shifting their resources from TES employees to the vendor in order to bypass the limit.

We identified 58 former TES employees that are now procured through the vendor. From calendar year 2013 through calendar year 2015, the state paid \$475,000 more for their services than would have been paid had they remained TES employees. If all positions were filled through TES hiring versus vendor procurement, the state could have saved an estimated \$5 million in calendar year 2015.

The cooperative procurement agreement also allows direct referrals by state agencies for specific individuals they want to hire. Direct referrals may undermine the core mission of the state Civil Service process. Their mission is to provide an employee selection system designed to attract and retain a high-quality, diverse workforce in accordance with established merit system principles and guidelines to ensure a fair and efficient human resource delivery system that rewards quality, merit, and productivity. There were 427 direct referrals in calendar year 2015, 23 of whom were retired state employees, including 19 who worked for the same state agency from which they retired.





State of New Jersey

OFFICE OF THE STATE TREASURER

PO Box 002

TRENTON, NJ 08625-0002

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

FORD M. SCUDDER
State Treasurer

February 15, 2017

Mr. John J. Termyna
Assistant State Auditor
Office Legislator Services
Office of the State Auditor
125 South Warren Street
PO Box 067
Trenton, New Jersey 08625-0667

Dear Mr. Termyna

This letter is in response to your correspondence dated January 9, 2017 regarding the Office of Legislative Services audit report of the Department of the Treasury, Division of Purchase and Property, Temporary Staffing Services Contract. Below you will find the Department of the Treasury's response to your findings and observation.

Analysis of Cooperative Agreement Cost Effectiveness

OLS Finding:

The cooperative procurement agreement did not yield cost savings.

Recommendation: When considering the use of cooperative procurement agreements in the future, we recommend the division comply with the Administrative Code and verify that such an agreement is the most cost-effective solution.

See Auditor's Follow-up
Response #1

Treasury Response:

We respectfully disagree with this finding as it overlooks the standard for cost-effectiveness defined by regulations. DPP does a cost/price reasonableness analysis, consistent with state statute and federal regulation. Federal Acquisition Regulation (FAR), sections 15.404-b-2-ii regarding the use of historical pricing and 15.404-b-2-iv regarding the use of published indexes where applicable provide relevant guidance

As stated in N.J.A.C. 17:12-1A.3, cost effectiveness shall be determined by considering pertinent factors such as the following;

1. Lower than current State contract pricing that will afford material cost savings;

The analysis presented by ACRO as a result of the solicitation for temporary services contained a number of cost savings projections. The Division's recommendation based its findings specifically on the difference between the average billable rate paid by the State for these services prior to this contract and the average billable rate of the new contract pricing being awarded. This was indicative of material cost savings to the State at the time of award. The average historical rate presented by ACRO has since been reviewed against relevant purchase order data and found to be consistent with the State's average billable rate from the previous contracts for these services.

2. Lower than pricing for comparable goods or services of other State or public entity contracts;

A decrease in the projected billing rate is not indicative of cost effectiveness alone, it requires a comparison to market conditions to determine if this decrease is competitive in the market for these services. In order to determine this, the Bureau of Labor Statistics' database (www.bls.gov) of Producer Price Indices was researched for an applicable comparison. A Producer Price Index for temporary help services (Series ID: WPU4631) was located, and it indicated that in the years leading up to the new agreement that market pricing had increased by at least 2%. This compared favorably to the projected decrease in average billable rate, resulting in confirmation that the pricing which resulted from the solicitation was fair and competitive.

3. Expanded product or service availability;

The ACRO contract allows the State Agencies to procure a wide breadth of temporary employees that historically often required multiple new solicitations to accommodate.

4. The ability to avoid the cost and time of a State procurement;

Through the implementation of a cooperative agreement for temporary help services, the State Agencies are able to more effectively respond to their staffing needs than through the use of a conventional procurement. A typical procurement for this type of service could take over six months, and require the time and associated costs of a number of State employees.

5. Lower minimum purchase requirements;

The ACRO contract has no minimum volume requirements, allowing all Agencies to receive the full benefit of this contract regardless of the scale of their individual requirements.

A complete price list for the contract has been posted on the Division's public contract website since the initial contract award, including all subsequent contracted price adjustments.

Affordable Care Act

OLS Finding:

Improvements are needed to ensure reimbursement of unneeded Affordable Care Act payments.

Recommendation: We recommend the division adequately convey to using agencies that they should accurately account for the number of temporary workers not receiving insurance through the vendor and seek reimbursement for these overpayments.

See Auditor's Follow-up
Response #2

Treasury Response: The State Contract Manager in the using agency manages and administers the contract pursuant to N.J.S.A. 52:34-10.7. However, the Division will provide support to the SCMs as needed and can provide the following background on the contract. The underlying U.S. Communities contract incorporated the ACA amendment on April 9, 2015. As a result of the new ACA law, and per ACRO's May 19, 2015 letter to the Division, audits of the ACA cost are performed every 6 months and reimbursements are made to the using agencies. This ACA audit process was memorialized in the Division's contract amendment dated June 25, 2015, and posted on our public website. The first adjustment period ended December 31, 2015. While we appreciate OLS' support on this matter, well in advance of the OLS' January 8, 2016 audit commencement notification, a reconciliation system was already in effect.

The first series of reimbursements have been made to the State. This reconciliation process initiated in 2015 continues to be refined; consistent with the Division's notifications on this contract, the Division will also communicate the verification procedures to the SCMs at the appropriate time.

Temporary Staffing Services

OLS Observation: The contracted services could pose a risk for circumvention of Civil Service hiring regulations, as well as concealing the employment of retirees prior to their bona fide retirement date.

See Auditor's Follow-up
Response #3

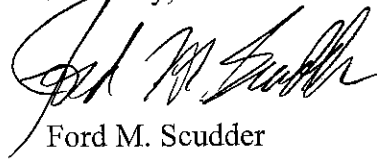
Treasury Response: We appreciate the observation; however, temporary staffing decisions are made at the agency level rather than by the Division. More importantly, comparing the cost of vendor-supplied temporary workers to full-time State employees is not an "apples-to-apples" juxtaposition. Many factors come into play when an agency considers the use of temporary staffing employees vs. State employees. Besides salaries, agencies also must evaluate other long-term cost components that would be incurred by the State for full-time State employees such as health care benefits, worker's compensation, Medicare and FICA. These fringe benefits cost the State an average of \$21,826 per employee each year. Combine that with the average salary of a new hire, and the cost increases to \$70,060 for each new hire per year.

To calculate the cost of using State workers, we can use the example that you provided of 893 temporary staffing service employees that you assert worked more than six months in a calendar year. Multiply that number by the average annual cost of a new hire and the total expense balloons to \$62.5 million, nearly double the total non-TES temporary staffing services expenditures cited for FY16. The extra spending on those employees alone would be approximately five times the TES savings estimate of \$5 million that your Office cited. It would not be a prudent or feasible use of taxpayers' money for agencies to spend far more on talent than is necessary.

Many of these temporary roles are filled by talent with extremely specialized skill sets on projects that have not been previously performed by State employees. Keep in mind that most of these employees come from the private sector, and their job titles are not necessarily commensurate with traditional civil service titles.

Temporary staffing service employees give agencies a flexible option to acquire work-product knowledge and unique skill sets to complete an essential task on an ad-hoc basis. The benefits of using the temporary staffing service contract to employ a highly specialized pool of talent for short periods of time are considerable and appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "Ford M. Scudder", written in a cursive style.

Ford M. Scudder
State Treasurer

Auditor's Follow-up Response

The Department of the Treasury's response to our audit includes several comments that require clarification.

Follow-up Response #1

While the division may have followed the standard for cost-effectiveness defined by regulations, the use of the cooperative procurement agreement did not yield cost savings as projected by the vendor. Based upon actual costs which exceeded projections by 28%, we strongly recommend revisiting the analytical process used to determine the approval of these types of agreements.

Follow-up Response #2

Although a system was in place, it was not functioning properly until we brought the issue to the division's attention. State agencies utilizing the contract were unaware they were entitled to and responsible for seeking reimbursement for overpayments for temporary workers not receiving insurance pursuant to the Affordable Care Act. Reimbursements were only requested once we made the issue known to the division.

Follow-up Response #3

Our comparison used temporary employment service (TES) positions which are current state positions that accrue limited fringe benefits. We would agree that any comparison to a full-time position would not be a prudent use of taxpayers' money. However, a comparison with TES positions would yield significant savings as described in the observation.