



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 6, 2014

Howard Zucker, M.D.
Acting Commissioner
Department of Health
Empire State Plaza
Corning Tower Building
Albany, NY 12237

Re: Report 2014-STAT-02A

Dear Acting Commissioner Zucker:

As part of our daily audit, we examined¹ select payments to Maximus Inc. by the Department of Health pursuant to \$435 million in amendments to contract C025147, which now totals \$605 million. Under the amendments, Maximus is required to staff a Customer Contact Center and an Eligibility and Enrollment Unit for the New York Health Benefit Exchange (NYHBE), and to provide other relevant support to the Department. The services contained in the amendments were not subject to competitive bidding or contract approval by the Comptroller's Office.² During our examination, we identified significant concerns regarding cost controls related to the amendments.

In essence this is a "time and materials" contract instead of a deliverable-based contract with specific milestones and performance requirements. Spending for the \$435 million is based on lump sum, estimated prices for general categories. For example, on one task order, Maximus estimated more than \$27.2 million for "Non-IT Operations Planning, Implementation, and Operations Labor." There are no provisions in the amendments and related task orders we examined to limit the amount Maximus may charge the Department for labor, fringe benefits, overhead, general and administrative expenses, other direct costs, and profit. Consequently, there is no contract-based incentive for Maximus to control its costs. In addition, Department officials have not yet negotiated any "not to exceed" prices with Maximus, which could help mitigate this risk. To date, we have shared with Department officials the following areas most likely to benefit from cost control measures.

¹We 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.

²Social Services Law, Article V, Title XI, Section 365-N.

Profit

Maximus charges the Department a 17.65 percent profit on all costs, including labor, indirect costs, and reimbursable expenses (e.g., travel). This rate is higher than the 15 percent operating profit margin Maximus reported for the company's September 2013 fiscal year end for its health sector customers in the Eastern United States. If Maximus charged the Department a profit of 15 percent, the Department could save approximately \$8 million over the life of the \$435 million amendments. Given the size of the NYHBE, the Department may be able to negotiate a discounted profit rate lower than 15 percent. In addition, removing reimbursable expenses from the profit calculation could save another \$448,000 over the life of the contract. *We recommended the Department negotiate with Maximus to pay a lower profit. We also recommended the Department consider limiting the costs on which Maximus may charge profit.*

General and Administrative Fees

Maximus also charged the Department a fee for general and administrative expenses calculated at 14.2 percent of certain direct costs (about 85 percent of all costs billed), including labor and reimbursable expenses. There is no information to support whether this rate is reasonable. In addition, removing reimbursable expenses from the general and administrative fees calculation could save another \$371,000 over the life of the contract. *We recommended the Department establish a reasonable rate for general and administrative expenses. We also recommended the Department consider limiting the costs on which Maximus may apply the general and administrative fee calculation.*

Travel

Maximus charged the Department travel costs that exceed most governmental rates and can be considered extravagant. For example, we examined \$91,000 in lodging that Maximus charged the Department over a six month period and found that nearly one quarter of all charges (\$22,000) was in excess of the State and Federal per-diem rates, as published by the General Services Administration. This includes instances where Maximus employees stayed in "deluxe" rooms in New York City for \$599 a night instead of the maximum per-diem of \$303, and instances where Maximus billed the Department for meals that exceeded per-diems by as much as \$50 per person. *We recommended the Department consider limiting travel expenses to maximums published by the General Services Administration.*

Labor

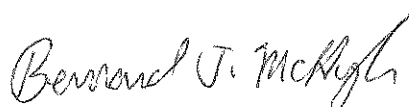
Invoices contain insufficient information to determine whether the hourly rates Maximus charges the Department for labor are appropriate and warranted. We examined labor charges on select

invoices and found that for nearly half of the 170 personnel titles, the hourly rates for different employees in the same title varied by as much as \$100 per hour. Hourly rates are based on the employee's hourly pay rate, plus fringe benefits (up to 44.7 percent) plus overhead (8.2 percent for operations staff and 28.6 percent for information technology staff).

The amendments and task orders do not include a list of titles necessary to establish and operate the NYHBE, related hourly labor rates, necessary qualifications, or estimated number of staff needed. As a result, the Department does not have the information necessary to evaluate whether Maximus is assigning only the number of appropriately qualified personnel for tasks, whether Maximus is billing at the correct rates for the staff assigned and the work performed, and whether the rates are reasonable. *We recommended the Department consider including the titles, qualifications, and reasonable billing rates for all necessary personnel.*

Department officials were receptive to our recommendations to control costs under the amendments and task orders going forward. We will continue to examine payments under this contract as part of our daily audit and will advise you of any additional concerns as they arise. If we can provide you with any other information, please contact me at 518-402-4104.

Sincerely,



Bernard J. McHugh
Director of State Expenditures

cc: Sue E. Kelly, Executive Deputy Commissioner
Diane Christensen, Director, Internal Audit