



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

April 23, 2015

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

Re: Report 2014-STAT-02C

Dear Dr. Zucker:

This is a follow-up to our letters dated May 6, 2014, and November 25, 2014, which we issued to the Department of Health concerning expenditures with Maximus, Inc. under contract C025147, which now totals \$684 million. We continued to examine<sup>1</sup> payments under this contract and found additional cost savings opportunities.

Fringe Benefits

Maximus is currently charging the Department a fringe benefit rate of 86.33% for Systems staff that are operating data centers while charging the Department a fringe benefit rate of 47% for all other Operational and Systems staff. Maximus included the Systems staff in the same cost pool as bonus-eligible executives from the home office, such as Chief Executives and other senior staff. However, Systems staff do not receive bonuses.

We performed an analysis and found this billing practice is not appropriate. Subsequently, the Department reviewed CFR Part 200; the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards to determine the propriety of fringe benefit distributions. The Department found the inclusion of executive bonuses in the calculation of the Systems staff's fringe benefit rate does not appear reasonable since the bonuses apply only to a small percentage of individuals included in the cost pool.

*We met with your staff and recommended that they have Maximus adjust its billing practice to move Systems staff out of the bonus-eligible executives' fringe benefits pool. Staff were receptive to our recommendation.*

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<sup>1</sup>We 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 11, Section 8, and Article VII, Section 111 of the State Finance Law.

Temporary Labor

Based on our prior recommendations, the Department negotiated with Maximus to institute a labor rate schedule for all personnel charged to the contract. However, Maximus does not enforce the rates in the schedule for contractors providing temporary labor. Instead, Maximus passes on to the Department higher labor rates for temporary laborers in the same titles as Maximus staff. We analyzed temporary labor charges for the August 2014 voucher and found that if Maximus applied the labor rate schedule for temporary laborers in the same titles as Maximus staff, the Department would have saved more than \$44,000.

*We met with your staff and recommended the Department (i) enforce the labor rate schedule for all labor charges and only reimburse Maximus up to the labor rates in the contract, and (ii) recover all temporary labor charges which exceeded the labor rate schedule for all vouchers paid since the rate schedule went into effect. Again, your staff were receptive to our recommendations, and reported Maximus is performing an overpayment analysis for the May 2014 through December 2014 vouchers. Maximus will issue a credit on a future invoice.*

We would appreciate your response to the above recommendations by May 25, 2015 indicating any actions planned or outcomes realized. We will continue to examine payments under this contract as part of our daily audit and will advise you of any additional opportunities as they arise. If we can provide you with any other information, please contact me at 402-4104. We thank the management and staff of the Department for the ongoing courtesies and cooperation extended to our auditors.

Sincerely,

Bernard J. McHugh  
Director of State Expenditures

cc: Sally Dreslin, Executive Deputy Commissioner  
Diane Christensen, Director, Internal Audit  
Marybeth Hefner, Deputy Director, Fiscal Management Group



## Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

May 21, 2015

Mr. Bernard J. McHugh, Director  
Office of the State Comptroller  
Bureau of State Expenditures  
110 State Street  
Albany, NY 12236-0001

Dear Mr. McHugh:

Enclosed are the Department of Health's comments on the Office of the State Comptroller's Draft Audit Report 2014-STAT-02C entitled, "Continuing an Examination of Contract C025147 - Maximus Inc."

Thank you for the opportunity to comment.

Sincerely,

Sally Dreslin, M.S., R.N.  
Executive Deputy Commissioner

Enclosure

cc: Michael J. Nazarko  
Ed Cahill  
Mary Beth Hefner  
Judy Arnold  
Donna Frescatore  
Jason Helgerson  
Ann Volpel  
Susan Kahler  
Lori Conway

**Department of Health  
Comments on the  
Office of the State Comptroller's  
Draft Audit Report 2014-STAT-02C entitled, "Continuing an  
Examination of Contract C025147 - Maximus Inc."**

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The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Draft Audit Report 2014-STAT-02C entitled, "Continuing an Examination of Contract C025147 - Maximus Inc."

**Recommendation #1**

We met with your staff and recommended that they have Maximus adjust its billing practice to move Systems staff out of the bonus-eligible executives' benefits pool. Staff were receptive to our recommendation.

**Response 1**

As OSC noted, the Department found that inclusion of executive bonuses in the calculation of the fringe benefit rate for Systems staff that are operating data centers does not appear reasonable because the bonuses apply only to a small percentage of individuals included in the cost pool and do not apply to the Systems staff. MAXIMUS is adjusting its billing practices and will apply the same fringe benefit rate that is applied to all other Operations staff on the project to the Systems staff in the data centers. The Department is currently working to quantify and validate the impact of that change to ensure that all appropriate credits from past invoices are received.

**Recommendation #2**

We met with your staff and recommended the Department (i) enforce the labor rate schedule for all labor charges and only reimburse Maximus up to the labor rates in the contract, and (ii) recover all temporary labor charges which exceeded the labor rate schedule for all vouchers paid since the rate schedule went into effect. Again, your staff were receptive to our recommendations, and reported Maximus is performing an overpayment analysis for the May 2014 through December 2014 vouchers. Maximus will issue a credit on a future invoice.

**Response #2**

As OSC noted, for the period May 2014 – December 2014, Maximus was applying billing rates for temporary labor that exceeded the rates in the labor rate schedule in the task order agreement. The Department is working with MAXIMUS to enforce the labor rate schedule for all temporary labor and to quantify and validate the amount of the credit due to the Department for any previous inappropriate billing.