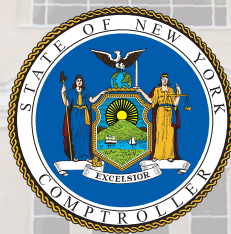




Department of Correctional Services

Oversight of Revenue Contracts

Report 2009-S-33



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

August 19, 2010

Mr. Brian Fischer
Commissioner
Department of Correctional Services
1220 Washington Avenue
State Campus Building 2
Albany, NY 12226-2050

Dear Commissioner Fischer:

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 *Oversight of Revenue Contracts*. This audit was performed pursuant to the State Comptroller's authority under 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*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objective

The objective of our audit was to determine whether the Department of Correctional Services (DOCS) is maximizing all potential revenue opportunities and is effectively monitoring its revenue contracts to ensure all entitled revenue is billed, collected, and promptly deposited in appropriate accounts.

Audit Results - Summary

We found opportunities for DOCS to better maximize all potential revenues from certain revenue contracts as well as opportunities for DOCS to better monitor certain of these contracts.

For example, there is an opportunity for DOCS to increase its revenues under the inmate Phone Home System by including DOCS administrative and operating costs in per minute rates charged for use of the System. Such costs totaled about \$2.1 million over our approximately three year audit period and DOCS estimated that the recovery of such costs would add less than one cent per minute to the cost of a collect call.

We also found that DOCS needed to strengthen its oversight for the revenue generated from the vendors who have cellular telephone towers located at facilities as well as for the revenue generated from facility vending machine commissions and sales of recyclables.

Our report contains eight recommendations. DOCS officials generally agreed with our recommendations.

This report, dated August 19, 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
110 State Street, 11th Floor
Albany, NY 12236

Introduction

Background

The New York State Department of Correctional Services (DOCS) is responsible for the confinement and habilitation of approximately 60,000 inmates held at 67 State correctional facilities and the 916 bed Willard Drug Treatment Center. DOCS' operating budget for the 2009-2010 State fiscal year totaled about \$3 billion including the cost for 30,331 full time employees. Of these employees, 20,200 (67 percent) were security personnel, while the remaining ones were responsible for inmate programs, inmate health services or facility administration and operation.

As of April 1, 2006, DOCS had awarded 84 revenue contracts. These contracts were expected to generate \$142.2 million in Department collections from vendors. The largest of these contracts is the inmate collect call telephone contract which accounts for about \$131 million of revenue. In addition, DOCS has 70 vending machine contracts accounting for about \$7.1 million of revenue, seven contracts with county correctional facilities for Cook/Chill food services accounting for about \$2.7 million of revenue, five contracts with Corcraft for various services accounting for about \$1.3 million of revenue and one small contract for space rental.

Audit Scope and Methodology

We audited DOCS' oversight of its revenue contracts for the period April 1, 2006 through May 31, 2009. To achieve our objective, we interviewed agency personnel and visited five correctional facilities. We also reviewed the contract revenue collection information submitted by DOCS to the Office of the State Comptroller's Bureau of Accounting Operations, as well as records maintained by DOCS for its contract revenue collections.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our audits 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

Our 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 DOCS 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.

Within 90 days of the final release, as required by Section 170 of the Executive Law, the Commissioner of the Department of Correctional Services 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, Robert Mehrhoff, Roger C. Mazula, Alexander Marshall, Michele Turmel, and Gayle Clas.

Audit Findings and Recommendations

Maximizing Revenue

Inmate Telephone Services Program

The DOCS “Phone Home” program allows inmates to make a limited number of collect telephone calls to individuals on approved call lists. Prior to the 2007-08 fiscal year, DOCS operated the program through a contract with a phone service provider which charged the recipient of each call a flat fee of \$3 plus 16 cents for each minute of connection time. In turn, DOCS received commissions from the provider, which totaled \$13 million in 2006-07. This money was then used to fund various inmate services.

Recognizing that incarceration has serious impacts not only on inmates, and concerned that the high cost of these calls place an additional financial burden on family members left behind, the Governor announced in January 2007 that DOCS would eliminate the State’s commission on collect calls with a goal of reducing the cost of Phone Home calls by at least 50 percent. Prior to this change, the average 20 minute call would have cost \$6.20 (a \$3.00 connection charge plus \$3.20 for 20 minutes at \$.16). A one year extension to the existing contract eliminated the connection charge on April 1, 2007, thereby immediately reducing the cost of the average call to \$3.20; a 48 percent reduction.

Over the ensuing year, the Legislature enacted Section 623 of the Corrections Law, which requires that DOCS telephone service contracts provide the lowest possible cost to the user, and prohibits DOCS from generating revenue from these services beyond its reasonable operating costs of establishing and administering the program. In response, DOCS established a new longer-term contract that further reduced the per-minute charges from 16 cents down to 4.8 cents. As a result, DOCS has been successful in reducing the cost of the average 20 minute call to less than a dollar; thereby eliminating about 84 percent of the charges that would have been billed in 2006.

While it is clear that the Governor and the Legislature did not want DOCS to profit from the Phone Home program, the Law does grant DOCS the authority to recover its program costs. We noted that, in its effort to pursue the least cost solution consistent with the Law’s objective, DOCS decided to absorb these costs and keep the charges as low as possible. While we understand and appreciate DOCS intention to minimize the additional hardships placed on families, the difficult fiscal situation that the State currently faces means that all agencies need to consider the fiscal impact of

past decisions and determine whether they are still appropriate in light of any potential for cost savings.

At our request, DOCS officials reviewed the administrative expenses associated with the program and identified \$4.9 million in projected costs over five-year term of the contract. About \$2.1 million of these costs were already incurred during the period covered by our audit. DOCS estimates that if these costs were factored into billings, the per-minute cost of a collect call would increase from 4.8 cents to 5.53 cents. If DOCS were to decide to adopt this approach, it would result in about \$1 million of annual cost savings. At the same time, cost of the average call would be just over \$1.10; still 82 percent less than the \$6.20 charged in late 2006 and far in excess of the Governor's goal of cutting costs in half. We believe this would still represent a significant achievement in terms of reducing the financial burden placed on inmates' families and friends.

Recommendation

1. Reconsider the opportunity to recover administrative costs associated with operating the Phone Home program.

(DOCS officials replied to our draft report that they will raise the issue of adding administrative costs to the per minute cost of a cell at the next available contract opportunity.)

Cellular Telephone Tower Revenue

The Division of State Police (State Police) administers revenue contracts for several cell towers in the State, including contracts pertaining to 22 cellular telephone towers located at various correctional facilities. State Police collects rent from the telephone companies and allocates the revenue to the applicable State agencies and then forwards to each agency its share of the revenue.

We noted that State Police did not always send DOCS the cellular tower revenue consistently after the end of the month and sometimes combined two or more months of revenue in a single transmittal. In addition, we found that State Police did not pay DOCS \$17,500 in cellular tower revenue for December 2007. Because DOCS did not adequately monitor the transmittal of cellular telephone tower revenue from the State Police, it was unaware that State Police had not sent the money. Subsequent to our audit inquiries, State Police paid DOCS the \$17,500.

Recommendation

2. Monitor cellular telephone tower rental income to ensure that all revenue due to DOCS is received and recorded timely.

(DOCS officials agreed with the recommendation and have taken corrective actions.)

Vending Machines

Correctional facilities enter into contracts with companies to provide vending machine services at the facilities. These contracts generate modest amounts of revenue from vendors. Each facility's business office is responsible for bidding the contracts, monitoring the vendor operations, and collecting and depositing the revenue. DOCS Directive #2770 specifies how vending machine revenues are assigned. According to Directive #2770, the contractor pays \$8 per month per machine to DOCS as space rental to defray electricity costs. Commissions on vending sales (generally 15 percent of sales) for machines located in visitor areas are deposited into the Inmate Occupational Therapy Fund. Commissions on machines located in staff areas are deposited into the Employee Benefit Fund.

We visited two correctional facilities to review their vending contracts and found the following:

- From April 1, 2006 to May 31, 2009, the business office at one correctional facility incorrectly deposited a total of \$3,552 of space rental money in its Maintenance Account, rather than the State's General Fund.
- One correctional facility sought competitive bids for its vending concession in 2006 and awarded the contract to the company with the largest commission to the State. However, because of payment and performance problems, the facility terminated the contract and replaced this company with another vendor. However, the contract was not re-bid and this company was not the next best consideration of those submitting bids in 2006. This company was providing vending machine services at this facility without a contract. We also found that business office staff at the facilities did not accompany the vendor's staff when re-stocking the machines or taking the proceeds, nor did facility staff routinely validate sales information.

There also may be opportunities for DOCS to earn more vending commissions than it does now. We noted that other State facilities (e.g., State University of New York colleges) receive commission rates that are sometimes more than 30 percent of sales, whereas DOCS commissions on vending machine sales generally were about 15 percent of sales.

- Recommendations**
3. Remind correctional facilities to ensure that revenues are accurate and are deposited in appropriate accounts.
 4. Remind correctional facilities that there should be formal contracts with vending machine companies.

(DOCS officials agreed with recommendations 3 and 4 and will issue a reminder to all facilities.)

5. Evaluate whether DOCS facilities should be receiving higher commission rates on vending machine sales.

(DOCS officials replied to our draft audit report they agree with recommendation. However, Directive #2770, “Vending Machine Contracts,” limits the commission rate a facility may establish because it is DOCS’ policy that vending machine contracts offer the highest quality merchandise at the lowest sale price while earning a reasonable commission. DOCS officials added that they will evaluate whether facilities should be receiving higher commission rates.)

Recycling Program

The Office of Correctional Industries Business Development at the Eastern Correctional Facility (Office) is responsible for the DOCS statewide recycling program. The program operates through 11 facility hubs (Wyoming Correctional Facility is the largest hub) where recyclables are accumulated from other facilities and are separated and bailed. Vendors purchase DOCS recyclables at market rates thereby generating DOCS revenue. The program also saves taxpayer money by diverting refuse from the waste stream.

From April 1, 2006 to March 31, 2009, DOCS received \$814,800 from its recycling program. However, based on our interviews with Office officials and our observations of the recycling program at the Wallkill Correctional Facility, we concluded that DOCS needed to take certain oversight steps to ensure revenues from its recycling program are maximized. Most notably, DOCS needs to extend the program to include as many facilities as possible, make sure that formal revenue contracts are in place governing the sale of the recyclables on the open market and needs to establish procedures to guide the billing and collection process.

- Recommendations**
6. Expand the recycling program to as many correctional facilities as possible.
 7. Require correctional facilities to have formal contracts with companies who purchase DOCS recycled materials.
 8. Develop procedures for facilities to follow for the billing and collection of revenue from recycling sales.

(DOCS officials agreed with recommendations 6, 7 and 8 and indicated that they will take actions to implement them.)

Agency Comments



BRIAN FISCHER
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS – BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

June 1, 2010

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street, 21st Floor
New York, NY 10028

RE: Draft Audit of DOCS - Oversight of Revenue Contracts (2009-S-33)

Dear Ms. Maldonado:

In accordance with Section 170 of the Executive Law and in response to your correspondence of May 5, 2010, attached is the Department's reply to the Draft Audit of DOCS – Oversight of Revenue Contracts, Report 2009-S-33.

DOCS would like to acknowledge the time and effort of all employees that were involved with this audit and their desire to improve the Department's operation.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Fischer".

Brian Fischer
Commissioner

Attachment



BRIAN FISCHER
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS – BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

GAYLE HAPONIK
DEPUTY COMMISSIONER
ADMINISTRATIVE SERVICES

June 1, 2010

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

Re: DOCS – Oversight of Revenue Contracts (Report 2009-S-33)

Dear Ms. Maldonado:

The Department of Correctional Services (DOCS) has reviewed the Office of the State Comptroller's (OSC) preliminary audit findings regarding the Oversight of Revenue Contracts (2009-S-33) and has prepared written comments to your recommendations.

Recommendation #1

Reconsider the opportunity to recover administrative costs associated with operating the Phone Home Program.

Response

DOCS agrees in part. The bid and resulting contract was drafted to emphasize that the lowest possible rates to be charged to customers. Under the RFP and resulting contract, administrative costs were to be borne by the Department. The contract has since been challenged and upheld by both OSC and the courts. Any attempt to revise the contract will result in additional costly litigation. In consideration of these factors, no change will be made at this time, however, DOCS will raise the issue of adding administrative costs to the per-minute cost of a call at the next available contract opportunity with the Executive Branch.

Recommendation #2

Monitor cellular telephone tower rental income to ensure that all revenues due to DOCS is received and recorded timely.

Response

DOCS agrees. The Department recognizes the shortcomings in the process used in receiving revenue from the Division of State Police and acknowledges the need to improve procedures. A tracking procedure has been put in place to prove the accuracy of any amount received against what the Department receipts should be and monitor the continuity and timeliness of such revenue.

Recommendation #3

Remind correctional facilities to ensure that revenues are accurate and are deposited in appropriate accounts.

Response

DOCS agrees. DOCS will issue a reminder to all facilities.

Recommendation #4

Remind correctional facilities that there should be formal contracts with vending machine companies.

Response

DOCS agrees. DOCS will issue a reminder to all facilities.

Recommendation #5

Evaluate whether DOCS facilities should be receiving higher commission rates on vending machine sales.

Response

DOCS agrees. Directive #2770, "Vending Machine Contracts," currently limits the commission rate a facility may establish since it is DOCS' policy that vending machine contracts offer the highest quality merchandise at the lowest possible sale price to staff and visitors while generating a reasonable commission. DOCS will evaluate whether facilities should be receiving higher commission rates.

Recommendation #6

Expand the recycling program to as many correctional facilities as possible.

Response

DOCS agrees. The Department will work to expand our current recycling program to as many facilities and operations as possible. DOCS is also developing a Departmental Directive on the recycling program.

Recommendation #7

Require correctional facilities to have formal contracts with companies who purchase DOCS recycled materials.

Response

DOCS agrees. DOCS will formalize all agreements pertaining to the purchasing of recycled materials whenever possible.

Recommendation #8

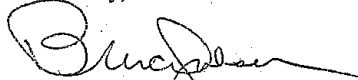
Develop procedures for facilities to follow for the billing and collection of revenue from recycling sales.

Response

DOCS agrees. DOCS will initiate procedures that improve on the billing and collection of revenues from recycling sales.

Thank you for the opportunity to comment on these audit findings.

Sincerely,



Bruce Johnson
Chief Fiscal Officer