

STATE OF NEW YORK DEPARTMENT OF LABOR

IN THE MATTER OF

SULLIVAN COUNTY

Appellant

appealing, pursuant to Section 21 et. seq. of the Labor Law, an audit that determined that certain funding pursuant to the Workforce Investment Act would have to be reimbursed for not being properly documented.

**REPORT
&
RECOMMENDATION**

GA-10-0134

To: Peter M. Rivera
Commissioner of Labor
State of New York

A hearing was held on January 18, 2012, continuing on January 19, March 22, and March 23, 2012, at Albany, New York, to inquire into and to report to the Commissioner of Labor findings of fact, conclusions of law and recommendations regarding the investigation conducted by the Office of Special Investigations, Contract Audit Unit (“CAU”) of the New York State Department of Labor (“Department”). The CAU had investigated whether Sullivan County (“Respondent”) complied with the requirements of a federally funded contract (“Contract”) entered into between the Department and the Respondents, the purpose of which was to provide worker training and related services for program years 2000 through 2007.

APPEARANCES

The Bureau was represented by Department Counsels Maria Colavito and Pico Ben-Amotz (William Osta, Senior Attorney, of Counsel).

Respondent submitted an Answer to the Notice of Hearing and appeared and was represented by Samuel Yasgur, County Attorney, and Thomas J. Cawley, Assistant County Attorney.

FINDINGS OF FACT

The Parties agree to many of the preliminary facts in this matter. Specifically, in its Answer, introduced in evidence as Hearing Officer Exhibit 2 (“HO 2”), Respondent admits the following:

The Department is the State agency responsible for overseeing, monitoring, and implementing the federal Workforce Investment Act (“WIA”), federal regulations, and the State enabling legislation found in Labor Law article 24-A (“NYWIA”) in New York State. Pursuant to its authority, the Department designated Respondent a Local Workforce Investment Area (“LWIA”) authorized to receive grants of federal funds to provide job training and employment services at the Sullivan County Works One-Stop Career Center at 50 North Street, Monticello, New York. (HO 2, p. 1, 2).

For the period April, 2000, through June, 2007, Respondent received approximately \$5,578,809 in federal grants (HO 2, p. 2).

The Sullivan County Center for Workforce Development (“CWD”) is the Sullivan County agency responsible for implementing programs and providing services pursuant to WIA and NYWIA. Laura Quigley is Director of the CWD and the Workforce Development Board (HO 2, p. 2, 3).

In a letter dated February 7, 2007, the Department issued a letter to Laura Quigley, Director of Respondent’s CWD, notifying Respondent that the Department had scheduled February 20, 2007, as the starting date for a financial and compliance audit (R. A).

The initial period of the audit was three years prior to the start of the investigation; that period later became seven years, the maximum audit period, as a result of findings during the course of the audit (T. 12, 112, 276, 277).

The audit was begun because the Department had received an e-mail from an employee complaining that Respondent was improperly spending WIA money (T. 10, 34).

The first Department auditor never saw the e-mail complaint; during the hearing Department counsel affirmatively stated that the e-mail did not exist in the Department’s records (T. 34, 35). The Department later produced the e-mail (R. E).

At the conclusion of the first auditor’s investigation he produced a Draft Audit (“Draft Audit”) that disallowed the entire amount of money – approximately \$5.6 million - provided to

Respondent by the Department during the period of time - 2000 through 2007 - covered by the Draft Audit (T. 31, 32).

The first auditor's involvement with the audit process in question ended some time in the spring of 2008 (T. 118).

A second Department auditor began work on the audit at the same time as the first (T. 186).

Regardless of allegations made by the Department's first two auditors that Respondent failed to follow appropriate procurement procedures or otherwise acted improperly, the Department's Audit Director, Timothy Burleski, testified that the only issues that were the subject of the audit by the time it concluded were whether Respondent properly allocated WIA funds and the level of documentation Respondent maintained to support payments for certain training or consultation services provided to Respondent from 2000 through 2007. Furthermore, Respondent subsequently satisfied the Department's concerns with regard to the allocation of funds, and the single issue for this Hearing is whether Respondent had sufficient documentation to support the payments it made for training and consultation services from a single vendor over the audit period (DOL 14; R. I; T. 476, 477, 543, 544, 545, 563, 565, 570 – 572, 632, 637, 733, 734, 958).

There were eight contracts between Respondent and the New York Association of Training and Employment Professionals ("NYATEP"), one for each year from 2000 through 2007. Each of the contracts had with it a resolution authorizing Respondent to enter into the contract passed by the Sullivan County legislature; a signature by the County Manager; a signature by NYATEP; and a signature by the County Attorney (R. S; T. 746 – 749).

As part of its regular contract compliance procedures, Respondent required the submission of an invoice and a voucher when paying on the contracts that are the subject of this proceeding. Vouchers contained a certification as to their accuracy signed by the party that submitted them (R. T-1 – T-39; T. 608-612).

Respondent's representatives signed the vouchers when invoices were submitted; the vouchers confirmed that Respondent received the services in question and that the charges were correct and did not exceed budgetary limits (DOL 8; T. 612-613).

Respondent's Director of CWD Laura Quigley was the official responsible for contract compliance involving WIA funding (T. 961 -963). Quigley was directly involved with, and

signed off on all but three of, the vouchers in question (R. T-1 – T-15, T-18 – T-26, T-28 – T-39; T. 964, 966). Quigley signed off on the vouchers only after documentation that the services described had been provided were sufficient; furthermore, she was directly aware that training and consultation services being provided as they took place at her work location (T. 967).

During the audit, the Department created several spreadsheets listing numerous factors including voucher and invoice numbers, dates of training, the amount disallowed by the Department, and notes concerning the questioned costs, and transmitted the spreadsheets to Respondent via e-mail for review and response, which process resulted in the amount of disallowance changing each time the Respondent provided additional supporting information acceptable to the Department (DOL 8; R. R; T. 642, 643, 740).

Once the Department determined that no irregularities involving procurement and allocation existed, \$614,862 in questioned WIA funding remained, of which the Department ultimately found \$416,987.00 to be supported by documentation provided by Respondent. The remaining \$197,875.00 arose from thirty-nine vouchers concerning consultation and training services brokered by NYATEP (DOL 6; R. G, T-1 – T-39; T. 475, 476, 734).

In the thirty-nine vouchers for which the Department partially or wholly disallowed costs, a representative of NYATEP certified under penalty of law that the amount in question was correct and the services were delivered on the dates set forth in the voucher; the Respondent's representative stated that the charges were correct and the services or materials set forth in the voucher were received; and Respondent's audit department approved the voucher. Each voucher also had with it an invoice submitted by NYATEP specifying the dates services or products were provided to Respondent and describing such services or products and, in all but five of the vouchers (R. T-7, T-10, T-13, T-20, T-25), some form of supporting documentation, e.g., meeting notes, agendas, brochures, etc. (R. T-1 – T-6, T-8, T-9, T-11, T-12, T-14 – T-19, T-21 – T-24, T-26 - T-39).

While Department witnesses averred that dated, contemporaneous documentation of consultation and training would help prove that events that were the subject of the questioned costs took place, they also admitted that either nothing in federal or State law or regulation required Respondent to maintain such documents, or they were unaware of any such requirement (T. 110, 111, 296, 592-596).

During the entire period of time covered by the audit, three to four times each year, the Department's office of Fiscal Oversight and Technical Assistance ("FOTA") sent representatives to Respondent's offices to perform several types of reviews of matters involving WIA funds (T. 935, 936). On multiple occasions, FOTA representatives found Respondent's CWD accounting and reporting systems in compliance with federal and State laws regulations and policies; there was never a finding that Respondent needed to maintain additional documentation such as dated contemporaneous materials to substantiate the vouchers approved for payment (R. U).

CONCLUSIONS OF LAW

The parties do not dispute that both federal and State law control in this matter. The federal Workforce Investment Act, 29 U.S.C. 2801, et. seq., regulations at 29 CFR Part 97, Office of Management and Budget Circular A-87 and the State NYWIA all apply. 29 CFR 97.20 sets forth the standards for financial management systems, and requires that "... Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to (1) Permit preparation of reports required by this part and the statutes authorizing the grant, and (2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes."

29 CFR 97.36 (b), which deals with procurement standards, requires "... (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section. (2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

OMB Circular A-87 C. 1. j. requires costs to "Be adequately documented."

DISCUSSION

Although the Department presented considerable testimony concerning various alleged improprieties in its Notice of Hearing, it ultimately withdrew most of the allegations set forth therein and agreed with Respondent that the only question in this proceeding is whether Respondent produced sufficient evidence during the course of the audit to prove to the Department that the services or materials described in each of the thirty-nine contested vouchers were provided to Respondent on the dates in question. The Department and its witnesses claimed that without dated, contemporaneously produced supporting documentation, the vouchers could not, as a matter of good accounting practices, be accepted as proof.

The Respondent responded that it had in place a rigorous process by which services or goods procured with WIA dollars were tracked; that the provider in each of the questioned vouchers certified that the services or goods had been provided on the dates shown on the invoices; that Respondent's Program Director and auditor reviewed each voucher and had personal knowledge that the services or goods had been provided on the dates in question; and that the Department's own field unit, FOTA, which performed grant oversight and visited Respondent three to four times in each of the years in question, made no recommendations that Respondent change its procedures. Furthermore, Respondent claims that the length of time involved made loss of some supporting documentation inevitable.

Two issues are of particular concern in this matter. First, the Department's own FOTA representatives visited and reviewed Respondent's practices several times per year during the entire audit period, and never cautioned Respondent concerning the manner in which vouchers involving WIA funds for training and consultation were reviewed and approved for payment. Second, the Department, while claiming that dated, contemporaneously created documents were the best form of supporting documents, was unable to point to a law, rule, regulation or policy that specifically required the maintenance of such documents.

Coupled with these two concerns is the fact that the Department itself, over the course of its audit, radically altered the amount of money disallowed and concluded its audit with a small fraction of what appeared in its Draft Audit.

There remain the thirty-nine vouchers totaling \$197,875.00 which the Department has disallowed. Of these, thirty-four have some form of supporting documentation. This

documentation may be a brochure, calendar page, some handwritten notes or the like. While it may not be in the form the Department would prefer, the weight of the evidence in this proceeding, including the credible testimony of Respondent's witnesses, the procedures that were in place, the certifications on the vouchers, and the supporting documentation itself, makes it clear that the consultation or training described in them did, in fact, occur on the dates in question.

The five remaining vouchers, which amount to \$26,000.00 in costs, differ from the others in a single, significant way. The evidence is clear that, rather than being supported by undated documentation, they are not supported by any documentation at all; they consist of only the vouchers and invoices. Respondent contends that these vouchers must be treated as the others, that the bare voucher and invoice alone are sufficient to withstand an audit and prove that the services were provided on the dates in question. On this issue, the Department's concern cannot be ignored. Requiring, in addition to voucher and invoice, a specific type of documentation that it had never before requested, in a form that it had not identified, imposes an unreasonable burden on Respondent; however, requiring *some* kind of documentation concerning the expenditure of federal funds is not beyond the pale and cannot be deemed excessive.

RECOMMENDATIONS

I recommend that the Commissioner of Labor adopt the within findings of fact and conclusions of law as the Commissioner's determination of the issues raised in this case, and based on those findings and conclusions, the Commissioner should:

DETERMINE that Respondent is a designated LWIA;

DETERMINE that Respondent received WIA funding from the year 2000 through the year 2007; and

DETERMINE that during the time in question Respondent annually entered into contracts with NYATEP for brokered training and consultation services; and

DETERMINE that of all of the materials reviewed by the Department, thirty-nine vouchers with costs totaling \$197,875.00 were disallowed as a result of an audit; and

DETERMINE that of the vouchers in question, thirty-four had supporting documentation sufficient to warrant a finding that the services described in the voucher were provided to Respondents on the dates set forth in the vouchers; and

DETERMINE that Respondent was unable to provide supporting documentation of any kind for the remaining five vouchers, totaling \$26,000.00; and

ORDER that Respondents must repay the \$26,000.00, the amount of the disallowance, found in the five vouchers that have no supporting documentation, by immediately remitting payment (made payable to the Department of Labor) to the attention of: Roger Bailie, Director, Administrative Finance Bureau, New York State Department of Labor, State Office Building Campus, Building 12, Room 516, Albany, NY 12240.

Dated: January 30, 2013
Albany, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jerome Tracy", with a long horizontal flourish extending to the right.

Jerome Tracy, Hearing Officer