



RICK SCOTT
GOVERNOR

Better Health Care for all Floridians

ELIZABETH DUDEK
SECRETARY

January 15, 2016

Ms. Christina Smith, Director
Florida Department of Financial Services
Division of Accounting and Auditing
200 East Gaines St.
Tallahassee, FL 32399-0353

Dear Ms. Smith:

Thank you for the opportunity to respond to the report resulting from your audit of selected AHCA contracts and grants active July 1, 2014 through June 30, 2015. In accordance with your request, we have emailed you our response document.

If you have any questions regarding our response, please contact Mary Beth Sheffield, Audit Director, at [REDACTED].

Sincerely,

[REDACTED]
Elizabeth Dudek
Secretary

ED/szg
Enclosure



Agency for Health Care Administration
Response to
DFS' Audit of Selected Agency Contracts and Grants
Active 7/1/14 through 6/30/15

Contracts and Grant Agreements

Each service contract and grant agreement must contain a clear scope of work, deliverables directly related to the scope of work, minimum required levels of service, criteria to successfully evaluate satisfactory performance, and compensation for each deliverable. Our review identified scope of work issues with one (1) agreement.

Scope of Work and Deliverables

- The agreement with Florida State University (University) did not contain a scope of work that required the University to perform all tasks expected by the Agency.
- There were no tasks or deliverables stated in the agreement for the last seven (7) months (December 2015 – June 2016).
- The Agency stated that the agreement was to remain open to allow for possible clarifications and/or revisions that may be required by the Federal funding source (Medical Assistance Program) as a result of the Federal review. The Agency, however, did not include the additional requirements in the scope of work.

Agency Response and Corrective Action Plan

The Agency agrees to amend the Contract to add a deliverable which requires the Vendor (Florida State University) to provide seven (7) months (December 2015 - June 2016) of maintenance and support to the Agency at no additional cost, including but not limited to the following: responses to questions from the Centers for Medicaid and Medicaid Services (CMS), revisions to the evaluation report based on Agency and/or CMS' feedback, maintenance of data, and compliance with HIPAA requirements.

Contract and Grant Management

Contract and grant managers must enforce performance of the agreement's terms and conditions, review and document all deliverables for which payment is requested, provide written certification of the Agency's receipt of goods and services, and ensure all payment requests are certified. Our audit disclosed that the Agency had Contract/Grant management deficiencies with the agreement with the University.

Sub-recipient vs. Vendor Determination

- According to Title 2, section 200.93, Code of Federal Regulation (CFR), vendors are not subject to compliance requirements of the Federal program. However, in this case, Federal funding was provided to the University through the State's Medical Assistance grant (CFDA 93.778) for the programmatic purpose of conducting research regarding the Medicaid Long Term Care Program.
- The funds are being used to advance the Federal Medicaid program which is for a public purpose, not for the exclusive use of the Agency.
- The agreement passed the Federal match requirement down to the University, making the University subject to the requirements of the Federal funding source. The programmatic purpose of the funding and the match are indicative of a sub-recipient relationship; however, the Agency granted the University vendor status.

Agency Response and Corrective Action Plan

The Agency respectfully disagrees with the DFS finding regarding the vendor determination.

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2 CFR 200.93 states: "Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency." It is not applicable. The federal guidelines for determining whether an entity is a subrecipient or a contractor are found in 2 CFR 200.330. The Agency followed those guidelines to determine that the Florida State University (FSU) is a vendor, not a subrecipient. 2 CFR 200.330(a) describes the characteristics of a subrecipient: "(a) Subrecipients. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See § 200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity."

None of these factors applies to FSU in the context of the work it performed under the contract. FSU was not tasked with carrying out a portion of the Medicaid program. Instead, it was contracted to perform an independent assessment of the Medicaid Long Term Care program. 2 CFR 200.330(b) states that a contract is for obtaining services for the non-Federal entity's own use that are ancillary to the operation of the Federal program. An independent assessment of the program is clearly not the operation of the program.

Furthermore, 2 CFR 200.330 (c) provides for the following use of judgement: "In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement," and not all of the characteristics listed in the section may be present in all cases. The substance of this relationship refers to the characteristics that, as a collective, are indicative of either a subrecipient or vendor relationship. Under 2 CFR 200.23, "Contractor means an entity that receives a contract as defined in § 200.22 Contract." 2 CFR 200.22 states: "Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award." The independent assessment was necessary to carry out the long term care program. The characteristics of this relationship between the Agency and FSU are that of a vendor contractual relationship.

OMB Circular A-87 defines contract as a "mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them." As noted above, FSU is providing an independent assessment and evaluation of the Long Term Care program, which is ancillary to the operation and Federal requirements of the Long Term Care program. The most appropriate instrument to obligate the seller, FSU, to furnish the independent assessment and evaluation services to the Agency is through a contract.

45 CFR 92.24 references "cost type contractors" in listing the items that would satisfy the matching or cost sharing requirements. 45 CFR 92.24 (a), states that the following would satisfy the above reference requirements: "allowable costs incurred by the grantee, sub grantee, or cost-type contractor under the

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assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties." In stating that allowable costs can be incurred by a cost-type contractor, this regulation implies that the existence of a state match or cost share is not a firm prerequisite for a subrecipient determination.

Lastly, FSU is authorized to provide the State match, like other Government entities, related to the Federal award funds paid to FSU in relationship to the contractual agreement entered into with the Agency. Florida only has to validate that its total matching funds are equal to, or exceeding the level required for the amount of Federal funds drawn down. Therefore, all sources of state match, cost share, and in-kind donations make up the total that Florida must commit to its share of the Federal dollars.

Federal Medicaid auditors and the Auditor General's office auditors have never cited the vendor determination as incorrect or not applicable to the contractual relationship between the Agency and the University.

Cost Analysis

Title 2, Section 200.433, CFR outlines the factors affecting the allowability of costs. To be allowable under Federal awards, costs must be "necessary and reasonable for proper and efficient performance and administration of Federal funds."

- The \$996,612 agreement was executed on February 27, 2015, eight (8) months later than expected, for the 16 month term ending June 30, 2016.
- The last seven (7) months of the agreement did not establish tasks or deliverables required from FSU.
- The term of the agreement and the period of performance did not align with the submitted budget.
- The agreement scheduled the final deliverable to be due no later than December 1, 2015, reducing the total period of performance to nine (9) months.
- The inclusion of 24 months of expenses does not meet the criteria established in Title 2, section 200.433, CFR, for allowability of costs.
- The budget and cost analysis were not effectively evaluated to coincide with the timeline established for the agreement.
- The original budget was not adjusted and reevaluated to reflect the actual period of performance.

Agency Response and Corrective Action Plan

The Agency respectfully disagrees that the executed agreement was in excess of the actual total costs. The Contract was executed late due to the time it took to resolve questions from both the Agency and Vendor (FSU) with all applicable parties weighing in. All deliverables were completed in accordance with the Contract in spite of the condensed timeframe. There are two considerations: 1) FSU has indicated to the Agency's Contract Manager that many of the researchers involved in the evaluation were working nights and weekends to meet applicable deadlines; and 2) The data provided by the Agency to FSU has been a source of much deliberation due to issues related to data integrity, accuracy and completeness. FSU has been diligent in meeting with the Agency on numerous occasions to resolve all issues and assist with improvement in the data collection process.

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The Agency reduced payments for the last two (2) deliverables completed and received in FY14-15 to account for the lack of cost share associated with the (inactive) period July 1, 2014 - February 27, 2015. That is, FSU was not able to provide the total amount of cost share due to the shortened service period, and therefore, the Agency could only match with federal funds the amount of cost share met, which reduced the total payments for FY14-15 by approximately \$178,403.

Verification of Matching Funds

Title 45, section 75.306, CFR, establishes criteria for matching funds contributed under federal awards. The University is responsible for matching funds at a one-to-one (1:1) ratio and reporting the applicable amount on each invoice for payment.

- Documentation to support the match was not received with the invoice.
- The University was allowed to retain all documentation and provide an annual attestation that the match had been met.
- Monitoring was completed through a desk review. The desk monitoring tool used by the Agency did not provide evidence that the match was verified.
- The Agency has no reasonable assurance that all the requirements of the match, including maximum percentages for indirect costs have been met without a review of the documentation necessary to verify.
- The Agency is passing the match requirement down from the federal funding source to the University; however the Agency would be responsible for any match not properly supported with evidentiary documentation by the University.

Agency Response and Corrective Action Plan

The criteria for matching funds in 45 CFR 75.306 are as follows:

(b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

- (1) Are verifiable from the non-Federal entity's records;*
- (2) Are not included as contributions for any other Federal award;*
- (3) Are necessary and reasonable for accomplishment of project or program objectives;*
- (4) Are allowable under Subpart E of this part;*
- (5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;*
- (6) Are provided for in the approved budget when required by the HHS awarding agency; and*
- (7) Conform to other provisions of this part, as applicable.*

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FSU's match meets these requirements.

As an entity of State Government and in keeping with arrangements with other Government entities, FSU is authorized to provide the State match related to the Federal award funds paid to FSU in relationship to the contractual agreement entered into with the Agency. Also, like other State Government entities, FSU will provide a Match Certification of the amount, source and applicable FFY upon request, for the purposes of performing Florida's annual match verification report. At the time the Annual Match Report is completed, all State match sources are compiled to determine the amount of State match provided in relationship to the amount of the Federal award funds drawn from the various letters of credit, during the given FFY. Since Florida need only validate that its total matching funds are equal to or greater than the level needed, for the amount of Federal funds drawn, all sources are added together to get a State total.

Federal Medicaid auditors and the Auditor General's (AG) office auditors have never cited the Agency for failing to have a match certification for 100% of invoice payments to universities that consist of federally awarded funds. Each year the Agency completes and submits an Annual Match Report to the AG auditors, the results of which is in-turned forwarded to Federal auditors for consideration. There has never been a determination that each invoice payment must contain a certification statement from FSU staff. The only concerns have been that if FSU provides the match, there should be a certification statement that attests that no Federal funds were used in the match. The Agency will provide backup documentation supporting this response, if requested.

Furthermore, to satisfy the concerns identified by DFS, the Agency agrees to amend this Contract to add a statement to the Method of Payment, Invoice Requirements section of this Contract that will require FSU to submit additional backup documentation to the Agency's Contract Manager upon request which verifies the amount of cost share provided.