



Rick Scott  
Governor

H. Frank Farmer, Jr., MD, PhD, FACP  
State Surgeon General

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## MEMORANDUM

Date: November 9, 2011

To: H. Frank Farmer, Jr., M.D., Ph.D., F.A.C.P.  
State Surgeon General

Through: James D. Boyd, C.P.A., M.B.A.   
Inspector General

Through: Michael J. Bennett, C.I.A., Director of Auditing 

From: Leslie E. Eckhart, Management Review Specialist 

Subject: Research Conclusions on the Department's *Personnel Contracts*

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We recently completed an informal review of *Contract Personnel (R-09-003)* in response to a request for information from the Inspector General. This was not an audit, simply an overview of the use of contract personnel within DOH.

During the course of our review, we noted certain areas where improvements might be considered by management to strengthen the processes involved in the selection and oversight of contract personnel working within the Department. We have noted those recommendations in our report.

We do recognize that currently there are changes taking place regarding the use of contract personnel. However, our project was initiated prior to these changes being announced and we feel the recommendations noted in our report still should be considered regarding any future use of contract personnel.

This project was not initiated as a formal audit or review, so we did not hold an entrance conference or exit conference as the original intent was to provide information directly to the Inspector General. However, since we included some recommendations to be considered by management, we offered the Division of Administration an opportunity to provide us with feedback and any concerns that their division might have had with our report before it was formally published. No feedback was received.

If we may answer questions or discuss concerns, please do not hesitate to let us know.

JDB/lee

cc: Richard C. Solze, Jr., M.A.  
Chief of Staff  
Kimberly A. Berfield  
Deputy Secretary  
Steven L. Harris, M.D., M. Sc.  
Deputy Secretary for Health  
Nicholas W. Romanello  
General Counsel  
Gary J. Mahoney, Director  
Division of Administration

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OFFICE OF INSPECTOR GENERAL

Mailing Address: 4052 Bald Cypress Way, Bin #A03 • Tallahassee, Florida 32399-1704

Physical Address: 2585 Merchants Row Boulevard, Prather Building, Suite 235



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State Surgeon General

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## MEMORANDUM

**DATE:** October 12, 2011  
**TO:** James D. Boyd, C.P.A., M.B.A., Inspector General *JDB*  
**THROUGH:** Michael J. Bennett, C.I.A., Director of Auditing *MJB*  
**FROM:** Leslie E. Eckhart, Management Review Specialist *LEE*  
**SUBJECT:** Research Conclusions on the Department's *Personnel Contracts*

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Based upon a management request following a 2009 investigative case (HIG-08-146), we have conducted a review consisting of research and analysis of the practices used throughout the Department of Health (DOH) for procuring contract personnel.

The initial purpose of our review was to evaluate the processes utilized for the hiring of contract personnel from NiteLines USA, Inc. and Tallahassee Community College (TCC), performing limited testing and analysis to determine if amounts paid for contract personnel services were reasonable.

Later, the review was expanded to include the following objectives: To identify all other contracts that involve the acquisition of contract personnel services, determine the extent of controls and monitoring of all contracts for the services of contract personnel, analyze the amounts paid to these vendors for contract personnel services, and conduct limited testing to determine if any paid DOH employee simultaneously served as a contract personnel employee for DOH and was being paid twice for performing the same function(s) in each role.

While we recognize management has recently decided to reduce dependency on the use of contract personnel to provide for agency staffing needs, the recommendations herein should be considered by management for any remaining and future contract personnel.

### Background

DOH utilizes numerous contract personnel throughout the Department. Contract personnel provide a variety of services for program areas such as the following:

- Information Technology (IT)
- Public Health Education
- Children's Medical Services (CMS)
  - CMS Network
  - Early Steps
  - CMS Medical and Regional Medical Directors
- Central Pharmacy
- Bureau of Labs
- Public Health Nursing
- Public Health Research
- Finance & Accounting (F&A)
- Marketing

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- Division of Disease Control
  - HIV/AIDS
  - Epidemiology
  - Immunizations
- Division of Emergency Medical Operations (DEMO)
  - Preparedness and Response
  - Emergency Medical Services
  - Administrative Services Unit
- General Services
- Minority Health
- Environmental Health
- Division of Family Health Services
  - Infant, Maternal & Reproductive Health
  - Abstinence Education
  - WIC

The vendors utilized by the DOH for their contract personnel include:

**NiteLines USA, Inc. and Tallahassee Community College**

For NiteLines USA, Inc., contract CO0G3 utilizes state and federal grant monies, while contract CO0G1 utilizes Florida's general revenue funds. In a similar way, contract CO0G2 with TCC utilizes state and federal grant monies while contract CO0F9, also with TCC, utilizes Florida's general revenue funds.

A variety of skill-sets are provided to DOH by NiteLines USA, Inc., and TCC. The jobs fulfilled include government operations consultants, contract managers, financial analysts, program managers and coordinators, emergency planning specialists, healthcare case coordinators, administrative support staff, systems analysts, and IT support staff.

**Statewide contracts**

Many DOH contract personnel are procured through the use of statewide contracting agreements that the Florida Department of Management Services (DMS) negotiates and makes available for all state agencies through the MyFloridaMarketPlace (MFMP) system. The statewide contract 973-561-10-1 is often utilized by DOH for IT services. Each state agency can utilize MFMP to facilitate the process of purchase order bidding with the MFMP "approved" vendors.

**University Contracts**

Other DOH contract personnel are supplied by Florida universities, such as the University of Florida, the University of South Florida and the University of Miami. These universities have programs that support the public health mission. The types of skill-sets provided include: medical directors and regional directors for individual or groups of CMS Area Offices, nursing staff and other healthcare workers, health educators, healthcare case coordinators, administrative support staff, and IT support staff.

Note: The contracts with NiteLines USA, Inc. and TCC will expire in December 2011. An ITN was advertised on June 15, 2011. Questions and Answers for the ITN were processed; bids received, opened and evaluated; intent to award announced. A formal protest by one of the participants was filed with an Administrative Law judge. As an option for resolution, DOH decided to "reject all" bids from this ITN. As of late September 2011, the decision has been made to drop pursuit of a revised ITN process for these staffing contracts due to another protest that threatens a lawsuit if DOH continues with a revised ITN. The Central Purchasing Office is working with each office utilizing contract employees to assist them to resolve the situation on a case-by-case basis. Employment alternatives open for use include: DMS State Term Contracts, Other Personal Services (OPS), or the requesting of full-time equivalents (FTEs) through the legislative budget review process.

## **Review Scope**

Our project started with a review of relevant laws, rules, and regulations concerning the hiring of contract personnel. It continued with interviews of DOH Human Resource Management (HRM) staff to determine the extent of their involvement in the processes and procedures for hiring contract personnel, as well as the creation and maintenance of contract personnel records and the performing of background screenings on these personnel. Research continued with the identification and analysis of data for a random selection of the contract personnel in MFMP. Contractor pay was analyzed in comparison to that of equivalent full-time state positions. Interviews were conducted to inquire of staff from several program areas what standard procedures were utilized for hiring contract personnel. Additionally, an attempt was made to create a comprehensive list of DOH's contract personnel.

During our research, we conducted interviews and exchanged emails with key staff within the following Central Office areas: IT, Division of Administration's Bureau of HRM, Bureau of General Services, Office of Contract Administration, the Bureau of Finance & Accounting, as well as the Division of Disease Control (HIV/AIDS), and DEMO (Preparedness and Response, Administrative Services Unit).

Additionally, we interviewed two current vendors who have had, over time, several contract personnel working for DOH.

It is important to stress that we did not conduct an investigation or an audit, but rather a review of the general procedures and processes used by DOH to procure contract personnel and whether these practices were uniform in nature and comply with purchasing regulations. We also gathered and conducted analysis on the contract personnel data for NiteLines USA, Inc., TCC and select vendors from the statewide contracts, particularly those that supply contract personnel for IT service.

## **Conclusions and Recommendations**

During our review, the rates of pay, benefits, and administrative fees paid for a limited number of contract personnel, provided by NiteLines USA, Inc. and TCC, were analyzed for reasonableness. None were found to deviate from the established state pay ranges.

In another test, we attempted to identify all of the Department's contract personnel. Although there appeared not to be a single source or list for identifying them, there were records accounting for contract personnel within involved work units. Limited testing also revealed no occurrences of dual compensation being paid to any DOH employee who was simultaneously serving as contract personnel performing the same job functions in each role.

We found that a unified and comprehensive framework of policies and procedures for the procurement, management, oversight and payment of all contract personnel does not exist within DOH. While many elements of this framework do exist separately throughout the Department in units such as Finance & Accounting, HRM, the Office of Contract Administration and the Purchasing Office, there is no organized effort in place to ensure these elements fit into a single framework.

If a set of global controls within a unifying framework for the oversight and management of staffing contracts were to be developed and run from one business unit at DOH, it would allow

for enhanced cost containment and a reduction in Department liabilities posed by fragmented oversight.

Based upon the results of our review, we have observed and concluded the information below.

## **1. Background Screening and Work Eligibility**

A higher level of DOH oversight within a unified framework specifically for contracted personnel would be able to ensure compliance with all DOH policies, especially those surrounding the verification of background screenings and work eligibility.

The responsibility of obtaining a background screening on any potential employee, whether permanent or contracted, rests solely with the work unit's hiring authority and/or supervisor of the employee (DOHP 60-5-08). The DOH HRM only performs background screenings upon the specific request of the contract's "hiring authority" or the position's supervisor. The HRM keeps the results for those background screenings they perform because the results are considered to be "sensitive data" and thus cannot be held in the employee's work unit files. If the potential employee's background screening uncovers a criminal record or application omission, the contract's "hiring authority" must work with the servicing human resource office to determine if that person should perform or continue to perform their job duties.

Our research determined that contract personnel placed at DOH by NiteLines USA, Inc., and TCC were not subcontractors since they are required to be direct employees of those vendors. Background screenings are required of all contract personnel by the four DOH-negotiated contracts with NiteLines USA, Inc. and TCC (contracts CO0G1, CO0G2, CO0G3, and CO0F9) in compliance with DOH policy (DOHP 60-5-08). DOH HRM performs background screenings and maintains results for all NiteLines USA, Inc. contract personnel. TCC performs their own background screenings (first an inquiry with the state, then a federal inquiry) on their contract personnel for DOH, as required by their *Contract/Grant User Manual*. TCC maintains the screening files for their contract personnel. Although screening results are not automatically sent to DOH, the Department may request a copy of it.

Testing was performed to verify the HRM logging of background screenings of NiteLines USA, Inc. contract personnel. We were able to confirm that background screenings did take place for all NiteLines USA, Inc. contract personnel chosen in our judgmental sample. The test sample was selected to represent a variety of position types and work units. TCC was not tested since HRM does not perform those background screenings.

For university contracts, such as those with the University of Florida and the University of South Florida, the process is similar to TCC in that contracted employees are hired by the universities and placed on their payrolls. DOH pays the universities for salaries and benefits in cost-reimbursement contract arrangements. Yet the potential employee screening process is closer to the NiteLines USA, Inc. process. For example, the University of Florida verifies work eligibility with E-Verify and maintains those results for their employees placed with DOH. The CMS Network works with DOH HRM to perform background screenings on these contract personnel.

The rules are different for other contract personnel, such as those obtained through statewide contracts, where the contract is maintained in MFMP. Background screenings are not required by the MFMP system or the basic MFMP contract language. Additionally,

background screening are not required by the DOH-specific language inclusions for contracts maintained in MFMP. Specifically, the *DOH Purchase Order Terms & Conditions* includes the statement that, "If this purchase order is for personal services by Vendor, at the discretion of DOH (*emphasis added*), Vendor and its employees, or agents, as applicable, agree to provide fingerprints and be subject to a background screen conducted by the Florida Department of Law Enforcement and/or the Federal Bureau of Investigation. The cost of the background screen(s) shall be borne by the Vendor."

We determined that the MFMP system does offer the ability to specify the option of requiring a background screening. This feature is activated during the MFMP contract processing by the addition of a user option of "SB" in the field titled "Buyer-Code." The coded value of "SB" requires the vendor to provide a security background screening.

Although MFMP contains the Buyer-Code optional field within its framework to facilitate contract definitions that require the vendor to perform background screenings, this option was never used in any of the MFMP personnel contracts sampled during our research. If this code of "SB" for security background is specified in the Buyer-Code field, the vendor will have to comply with this condition. Otherwise, MFMP's default contract statements indicate that "at the discretion of DOH" background screenings may be requested of the vendor for their contract personnel.

From the perspective of DOH, it is difficult to determine if statewide contracts are complying with DOH hiring policy, specifically proper background screening, since that paperwork is not routinely requested by the hiring authority at DOH and may not be required depending upon the contract language used in MFMP.

The federal employment eligibility verification paperwork for anyone being hired in the United States includes the I-9 form. Although this information is considered "sensitive", HRM stated that they do keep this information in their files, but only for those contract personnel they are requested to verify and perform a background screening.

During the investigation of the case that initiated this review, the hiring authority did not have a copy of the contract employee's I-9 form. The investigator determined that the subject was a subcontractor of a DOH vendor and the I-9 was in the hands of a subcontracting entity.

Our research found that for some DOH contract personnel tested, particularly foreign nationals in the information systems area, the subcontractors of vendors providing contracted personnel services to DOH maintained I-9 information. Whether with the contractor or a subcontractor, the work eligibility I-9 documentation was not maintained by, or copied to, DOH HRM.

**Our recommendations for consideration** by Department management:

- Add language to the DOH contract templates for future contracts requiring vendors to provide each contract personnel's background screening results in their entirety to DOH.
- Require the use of the "SB" code in the User-Code field on all personnel contracts created within MFMP.
- For contract personnel working for DOH, require that the hiring authority either:
  - request of vendors a copy of the background screening performed for consideration during the hiring process, or,

- hold a consultation with both the vendor and the servicing human resources office to discuss the results of the background screening and document this conference with a signed attestation by the hiring authority stating that the background screening was performed and used during the hiring process.
- Begin requesting copies of the I-9 employment eligibility verification documentation for potential contract personnel during the DOH interview process.  
Note: As of January 2011, the Executive Office of the Governor issued Executive Order 11-02 requiring that all new Florida contracts stipulate the use of the U.S. Department of Homeland Security's *E-Verify System* to verify the employment eligibility of all persons employed during the contract term. The use of this federal computer system will fulfill this function for the vendor. This should facilitate a uniform process for the DOH hiring authority to request and receive from the vendor I-9 verifications on all their contract personnel placed at DOH.

## 2. Procurement Procedures

In order to better manage contract personnel, there must be a unifying framework of policies and procedures for their procurement, management, oversight and payment which can be used as a standard to measure against. Our research indicates that several work units own pieces of the contract personnel process for DOH. These units include: the Central Purchasing Office, the Office of Contract Administration, the Bureau of Finance & Accounting, and HRM. Thus, there is no single work unit within DOH that is responsible for all the Department's contract personnel. As a result of the decentralized approach, this leaves each contract manager (CM) independently responsible for these numerous functions related to their own contract personnel.

Each DOH unit reviewed appears to use a general procurement process for contract personnel tailored to suit their particular needs. These steps, and some noted variations, are discussed below.

- a. The creation of a position description or statement-of-work (SOW) by the hiring authority and/or CM to identify the contract position. The SOW commonly contains the position's title, unit, duties and responsibilities, plus its skills, knowledge and requirements. Additionally, the SOW may contain the position's authorities, supervision level, a justification for the position and contract personnel screening requirements.
- b. The use of an authorization hierarchy to approve the creation of the contract position and its SOW. Some units include upper management in their SOW authorization hierarchy while others only include the manager/supervisor.
- c. The solicitation of bids from MFMP vendors (vendors of statewide contracts, NiteLines USA, Inc. or TCC) to fill the SOW for those contracts utilizing MFMP.
- d. The use of individual purchase requisitions (PRs) in MFMP containing the terms and conditions with vendors for each contract personnel hired (includes all vendors of statewide contracts, NiteLines USA, Inc. and TCC). The Universities have their own contracts outside of MFMP.
- e. The completion of interviews, reference checks and/or background screenings to be performed prior to hiring prospective contract personnel in accordance with the State and DOH contract policies and regulations.
- f. The supervisor's or hiring authority's oversight of the contract personnel's work, documenting their performance appraisals, verifying and signing timesheets, and maintaining files for each of their contract personnel.

- g. The work unit's administrative personnel updating MFMP to record the vendor's invoices. The invoices are scanned and posted to F&A's ZZZFeedback Inbox for payment.
- h. F&A recording vendor contracts on their FASCAN drive. F&A also records payments made to the vendor supplying the contract personnel in their Sharepoint balance sheet files.

When mentioned, justifications for the selection of contract personnel over permanent employees typically included the following: short hiring timeframes, continued use of incumbent contract personnel, difficulty finding properly qualified candidates, and the inability to create permanent positions due to funding issues. Some DOH units include justification documentation as attachments to the PR in MFMP, while others do not. Those justifications that were found in MFMP for contract personnel included written explanations or reasons, but did not include any actual financial analysis of a benefit to the State.

Based upon the interviews conducted, there was no indication of a single, formalized cost-benefit analysis required for the use of contract personnel over a permanent employee. However, according to documentation on their Intranet site, HRM has initiated newer procedures for hiring contract personnel than were originally discussed in interviews. These new procedures, *Approval Process for Hiring Contract Staff*, include directions for providing justifications for the source to be used for contract personnel (OPS, FTE, TCC, NiteLines USA, Inc., statewide contracts, etc...) and a detailed financial analysis for each position.

It should be noted that the new process applies only the "new," time-limited contract personnel, not a "continuation" of current contract personnel. However, it would stand to reason that the need to use a contracted employee may change from time to time, and thus a requirement should be included in the written procedures that "continuations" of a contracted employee must also be justified, based upon need and a financial impact to the program.

**Our recommendation for consideration** by Department management is for DOH to revise the newly written and recently released procedure (*Approval Process for Hiring Contract Staff*) to cover both "new" hires and the "continuation" of DOH contract personnel.

### 3. Contract Training and Monitoring

The overall success of monitoring DOH compliance with hiring and contracting policies related to contract personnel rests with properly trained employees to oversee contract personnel.

The Office of Contract Administration trains DOH employees on contract management responsibilities in accordance with *DOHP 250-14-07* through the "Basic Contract Management Training" class. Once certified, each active CM is required to be re-certified every two years through a course in the DOH TRAK-IT System. In addition, the Department of Financial Services (DFS) now requires "Advancing Accountability Training" for all CMs, plus a re-certification every two years.

DOH maintains a current list of all trained CMs and their training credentials on the Department's Intranet page. The Office of Contract Administration verifies the training status of a CM for all DOH contracts that pass through their office for review, whether it is the initial contract, an amendment or a renewal.

At DOH, each CM is responsible for all compliance aspects of each contract they manage, including contract personnel. CMs are required to maintain an official contract file for every contract they oversee. Once a vendor's contract is active, the official contract file maintained by the CM may be selected annually for review by the Office of Contract Administration according to a schedule they derive from their annual risk assessment. Their risk criteria includes: new contract managers, dollar amounts, whether the file was reviewed the previous year and other factors.

According to policy, CMs are not to delegate their contract management responsibilities because they are ultimately responsible for the contracts they manage. This provides a unique challenge to CMs when the contract being monitored either is for, or includes, the Department's use of contract personnel.

From a monitoring perspective, it is the immediate supervisors who are truly knowledgeable about the work and timesheets of their contract personnel. In some instances, contract personnel may work for supervisors who are not the designated CMs for the contract under which they were hired. These supervisors may or may not have attended the CM basic training course or the DFS training course. For those supervisors that do receive CM training, some are asked to do so by management for their work unit while others personally want to expand their skill-sets to include this knowledge. However, once initial CM training is received, there is no requirement for non-CM supervisors to keep their CM training current through re-certification, as is required for active CMs.

Supervisory records should contain the tracking and monitoring of timesheets and performance evaluations for each contract personnel just as would be tracked for a full-time equivalent (FTE) employee. In order to be effective and to report all the required information to the CMs for their contract personnel, supervisors of contract personnel need to be aware of all requirements and DOH policy related to contract monitoring.

It is also critical that there be constant and open lines of communication between the CMs and those that directly supervise contract personnel. Supervisors should be providing relevant information to CMs so that CMs are able to effectively perform their responsibilities in managing the contract(s).

**Our recommendation for consideration** by Department management is for DOH to:

- Improve its monitoring of compliance with contract requirements for vendors of the Department's contracted personnel by requiring all those *supervising contracted employees* to receive some form of appropriate training specifically for the proper monitoring of contract personnel, and
- Emphasize the responsibility of CMs in regard to contract personnel and that processes be developed and enforced that will ensure open lines of communication between CMs and direct supervisors of contract personnel regarding the performance of those personnel in relation to the meeting contract expectations.