



Montgomery County Government

MONTGOMERY COUNTY COUNCIL
OFFICE OF LEGISLATIVE OVERSIGHT

REPORT #85-1

APRIL 9, 1985

TITLE

An Evaluation of Three Health Department Clinician Contracts under \$10,000.

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I. SUMMARY, CONCLUSIONS AND RECOMMENDATIONS.

Summary. The subjects of this evaluation were three separate contracts with one independent contractor to provide certain mental health services for the Health Department. Originally, one contract was selected from those listed in the Contract Activity Reports prepared by the Department of Finance's Purchasing and Materiel Management Division. A review of the contract files revealed two additional contracts had been awarded to the same contractor. The total payment under the three separate contracts was \$8,477.

Conclusions and Recommendations.

1. Health Department staff are dedicated professionals who have a desire to provide health services within the constraints of the County's contracting policies and procedures; however, they are often frustrated, when administering contracts under \$10,000, with the many requirements in the various Administrative Procedures on contracting and the absence of departmental guidelines on the process of selection and negotiation of contracts under \$10,000 and for monitoring the financial aspects of contracts.

2. Better internal controls are needed to assure adherence to specific sections of County law and sound accounting principles.

3. Improvements to the internal control system are recommended in the areas of the Administrative Procedures and payments.

II. AUTHORITY. Council Resolution 10-1148, CY 85 Work Program of the Office of Legislative Oversight directed the evaluation by OLO, of several contracts from each of the contract categories (competitive bidding, negotiated procurements, sole source, emergency and request for proposal).

III. METHODOLOGY. A contract was selected from contracts listed in the Contract Activity Reports prepared by the Department of Finance's Purchasing and Materiel Management Division. Deborah Snead, Legislative Oversight Program Evaluator, performed this evaluation using a variety of contract auditing techniques, a review of documents (contract files, accounting records, County laws, and Administrative Procedures) and interviews with employees of the Health Department and the contractor.

IV. BACKGROUND.

1. Overview. The Health Department routinely contracts with independent contractors to provide specific health services and the cost of these services are usually under \$10,000. These independent contractors are commonly referred to as clinicians or consultants. For FY 85, the Health Department has 83 clinician/consultant contracts for a total dollar value of \$318,280.

The subject of this evaluation was a contract awarded to an independent contractor to provide certain mental health services for the Health Department. Originally, the contract selected for the evaluation was one awarded on May 5, 1984, to provide consultation and program evaluation services to the Health Department's Abused Persons Program staff. The contract amount was \$1,000. A further review of the contract files revealed two additional contracts had been awarded to this contractor during FY 84. Both contracts were awarded on August 11, 1983; one contract was for providing specialized consultation services to the Health Department's Parents and Children Together (PACT) Program staff and the other contract was for providing family or couple therapy to juveniles and their families upon referral from PACT staff. Total payments under these three separate contracts was \$8,477.

2. Contract Administration. County officials within the Purchasing and Materiel Management Division and the Health Department were specifically involved in administering these contracts. The Chief, Purchasing and Materiel Management Division, had signature authority for the contract documents and the Division served as the central depository of the official contract file. The Health Department performed the following actions:

- .selected the contractor and negotiated the hourly rates;
- .prepared the contract (the County Attorney's Office approved the contract for form and legality);
- .monitored the contractor's performance; and
- .approved all payments to the contractor.

V. EVALUATION

1. General. During the conduct of this evaluation it was apparent that Health Department staff are dedicated professionals. Their openness and willingness to cooperate during this evaluation emphasized their desire to provide health services within the constraints of the County's contracting procedures. The contract files within the Health Department were well organized and included all supporting documents. Likewise, all official contract documents were in the contract file in the Department of Finance's Purchasing and Materiel Management Division.

The remainder of this section of the report will discuss two areas, Administrative Procedures and payments where better internal controls are needed to assure adherence to County law and sound accounting principles. Each area will be discussed individually.

2. Administrative Procedures. Chapter 11B, Contracts, Procurement Matters and Public Ethics, became effective in July 1977, and included the following policy statements concerning contracts for professional services:

"Every means possible should be taken to assure that selection of professional contractors does not become arbitrary and to increase the visibility of and public trust in the participants and the process of selection and negotiating contracts where price is only one (1) of many selection criteria, and where it is in the public interest to negotiate with one (1) or more the most qualified firms.

An underlying policy of the county government is to provide various reviews and control features in order to ensure wide participation in proposal solicitation, evaluation and selection of professional contractors." (Sec. 11B-17).

The County government is currently working with interim procedures which were published in January 1981. These interim procedures are still being reviewed and the Director of the Department of Finance projects that they will be revised, rewritten and approved by October 1985.

The policies and procedures described in four separate Administrative Procedures (A.P.s) specifically apply to these clinician contracts.

- .AP 3-1, Contracts and Purchasing
- .AP 3-4, Contract Review Committee (CRC)
- .AP 3-10, Negotiated Contract Under \$10,000
- .AP 3-11, Contracting of Professional, Consultant and Human Services and Non-Standard Procurements.

The following paragraphs describe examples of specific policies and procedures which were not followed by the Health Department during the contractor selection and contract approval processes.

a) AP 3-4, Contract Review Committee (CRC), requires the CRC to review all sole source, proprietary, or non-bid contracts of \$3,000 or more. Additionally, AP 3-10, Negotiated Contracts Under \$10,000, requires CRC approval when more than one non-advertised contract is given to any one contractor. Finally, AP 3-11, Contracting of Professional, Consultant and Human Services and Non-standard Procurements, requires the CRC to review contracts that are being renewed for the third time without having been reviewed by the CRC.

The review by OLO of the three contracts revealed that all were non-advertised contracts and two of the contracts were over \$3,000 and had been automatically renewed each year since July 1980.

b) AP 3-10, Negotiated Contracts Under \$10,000, requires the Health Department's procurement team to select a minimum of three

individuals from a list of qualified contractors. The list of qualified contractors is to be updated at least annually; and when it is impractical to invite all qualified contractors to submit proposals, the selection is to be made on a rotating basis in order to insure an equal opportunity to all individuals on the list of qualified contractors. Finally, the AP stipulated that, if the number of qualified contractors on file was inadequate, the procurement team should identify additional qualified contractors and all efforts should be documented in the contract file.

The review by OLO indicated that the contractor was originally selected in April 1980, when the previous clinician resigned. Subsequently, two separate, additional non-advertised contracts had been automatically renewed each year since July 1980. Finally, the Health Department has not maintained a list of qualified contractors for these clinician services.

c) AP 3-10, Negotiated Contracts Under \$10,000, requires the Health Department to submit to the Contract Review Committee for approval, an interdepartmental procedure which is to be used in the qualification and selection of contractors.

The review by OLO revealed that no procedures were available at the time these contracts were negotiated. The Health Department is currently in the process of developing procedures for employing contract clinicians. This process should be fully implemented within the Division of Drug Abuse, Alcoholism, and Behavior Disorders Services for FY 86.

d) AP 3-10, Negotiated Contracts Under \$10,000, requires the Health Department to issue a written notice to the contractor to begin work, but only after execution of the contract.

The review by OLO revealed the Health Department has never issued a written notice to the contractor. Additionally, since two of the contracts were basically renewals of the previous contract, services were provided during July 1983, although the contracts were not signed until August 11, 1983.

Interviews with Health Department staff revealed frustrations with the many requirements in the various Administrative Procedures, which apply to clinician contracts under \$10,000. Adding to this frustration is the absence of departmental guidelines on the process of selection and negotiation of contracts with clinicians.

3. Payments. The contractor was required to submit monthly invoices, on a form provided by the Health Department, to a program manager in the Division of Drug Abuse, Alcoholism and Behavioral Disorders Services. Although one of the contracts included the provision that the contractor agreed that the County may audit the contractor's records relating to the contract, no written guidelines were developed to explain the type of records to be maintained by the contractor. Additionally, no written guidelines were provided to the program manager for monitoring the financial aspects of the contract or to require audits by the Department of Finance's Internal Audit section.

During FY 84, a total of 14 payments had been made to the contractor for a total of \$8,477. The program manager reviewed the computations and approved the monthly invoices. Additionally, the Office of Management Services of the Health Department reviewed and verified computations before the payment authorization document was signed. Finally, the Accounts Payable Section of the Department of Finance verified computations before processing payments.

This evaluator verified all computations included on the request for payments and traced specific items through the system back to the contractor's records. This audit procedure identified numerous examples where the data on the invoices did not accurately represent the services that were provided. In one instance, an original invoice for services performed under one of the three contracts was voided and a new invoice was created by the program manager to charge those services against one of the other two contracts. In a second instance, the contractor was paid for more hours than were actually worked.

When Health Department staff was questioned as to why the services performed under one contract were charged against one of the other contracts, the reply was basically that the funds were not available under the initial contract so the services had to be charged against the other contract because the County's contracting procedures did not provide for efficient and flexible measures for dealing with that type of a situation. Although no overpayment to the contractor resulted; this action does not follow sound accounting principles.

When Health Department staff was questioned concerning the second incident, where the contractor was reporting and being paid for more hours than were actually worked, the reply was basically that the contractor was instructed to report more hours in order to compensate for the low hourly rate specified in the contract. The contract terms, including the hourly rate and scope of services, were originally developed to comply with a previous federal grant requirement and had not been revised to reflect the higher actual cost of the type of service provided. The total compensation was not out of line with the current local professional rate for the service provided; however, in the opinion of the evaluator, when it was discovered that they would be unable to obtain services at this low hourly rate, the contract should have been modified to accurately reflect the hours worked and services provided. It should be noted that the Health Department is currently in the process of revising the contract terms for these clinician services. This process should be fully implemented within the Division of Drug Abuse, Alcoholism and Behavior Disorders for FY 86.

VI. CONCLUSIONS AND RECOMMENDATIONS.

1. Health Department staff are dedicated professionals who have a desire to provide health services within the constraints of the County's contracting policies and procedures; however, they are often frustrated with the many requirements in the the various Administrative Procedures on contracting and the absence of departmental guidelines on the process of selection and negotiation of contracts under \$10,000 and for monitoring the financial aspects of contracts.

2. Better internal controls to assure adherence to County law and sound accounting principles are needed in the areas of the Administrative Procedures and payments.

3. Recommended improvements to this internal control system are as follows:

.Revise the Administrative Procedures, which apply to clinician contracts under \$10,000, to address the Health Department's frustrations with the many requirements in the various Administrative Procedures.

.Develop written guidelines for monitoring the financial aspects of contract administration, including the type of records to be maintained by the contractor, and for auditing selected contracts by the Department of Finance's Internal Audit section.

.Request the Office of Legislative Oversight to select and evaluate clinician contracts during the 4th Quarter FY 86 to assure that procedures for employing contract clinicians increase the visibility of and public trust in the participants and process of selection and negotiation.

VIII. DEPARTMENT COMMENTS.

Before submitting this report to the County Council, a draft copy was sent to the Chief Administrative Officer, the Chairperson of the Contract Review Committee, the Department of Finance, the Department of Health and the contractor. Comments were received from the following:

1. Comments of the Director, Department of Finance.

M E M O R A N D U M

March 7, 1985

TO: Robert K. Kendal, Assistant Chief Administrative Officer
FROM: Max R. Bohnstedt, Director, Department of Finance *MRB*
SUBJECT: OLO Report 85-1, An Evaluation of Three Health Department Clinician Contracts Under \$10,000

Our comments to the OLO report #85-1, An Evaluation of Three Health Department Clinician Contracts under \$10,000 will be directed to the recommendations to improve the internal control systems.

- 1) Revise the Administrative Procedures

The Department of Finance, as the reviewer indicated, has rewritten these procedures and a new Procurement Manual is currently in the review process.

- 2) Audit selected contracts by the Department of Finance's Internal Audit Section

This process is currently in effect, but thus far has been limited to contacts in excess of \$25,000. As we proceed in contract audits, we will include contracts under \$10,000.

2. Comments of the Director, Health Department.

March 19, 1985

M E M O R A N D U M

TO: Lewis T. Roberts, Chief Administrative Officer
FROM: *Donald A. Swetter, M.D.*
Donald A. Swetter, M.D., Health Officer
SUBJECT: OLO Report 85-1, An Evaluation of Three Health Department Clinician Contracts under \$10,000

I have reviewed Draft OLO Report 85-1 concerning Health Department contracts and find that it is fair and factually correct. For your consideration, however, I offer the following general comments:

1. While the report makes the point that the present County contracting procedures for personal services are confusing and in need of improvement, it is also apparent that County contracting provisions were violated by a Health Department staff member. Steps are being taken to ensure that appropriate disciplinary actions are taken, that a repetition of the violations does not take place, and that all staff members monitoring contracts are fully aware of contract monitoring procedures.
2. Departmental procedures relating to contracting and contract monitoring are being revised, expanded and clarified. These procedures will be distributed to all staff involved in contracting and contract monitoring. A contract monitors' training session, last held on November 29, 1983, will be scheduled again in early FY 86 to ensure that staff are adequately prepared for contract monitoring responsibilities.
3. The Department has identified contracts for audit by the Finance Department contract auditors. To date, four contracts have been reviewed and additional contracts have been identified for audit after July 1. This process will be continued to ensure that the public trust is not violated.
4. The Department will be happy to work with the team established by the Director of Finance to make improvements to the current contracting procedures.

Additionally, I would like to respond directly to the points raised in the OLO Report:

1. "Failure to request CRC review of a sole source contract in excess of \$3,000 . . ."

Comment: It is the Department's understanding that the Director of Purchasing and Materiel Management refers contracts to the CRC as deemed appropriate. Over the past year, there has been increased attention to this requirement by the Purchasing Division and the Department has worked with the Purchasing Director to ensure compliance with Paragraph 3.3E, AP 3-4.

2. "Failure to obtain CRC approval when more than one non-advertised contract is given to any one contractor."

Comment: To prevent certain contracts from becoming unduly complex or to provide ease of management, certain professionals did receive more than one non-advertised contract without CRC approval being secured. Action will be taken in the FY 86 contract cycle to ensure that CRC approval is obtained whenever required.

3. "Failure to obtain CRC approval when contracts are renewed for the third time . . ."

Comment: This requirement requires clarification in the pending revision to the Interim Procedures. The Department is writing contracts with three option years as approved by the County Attorney and CRC. A meeting will be scheduled with the Purchasing Division to determine at what point these contracts must be referred to the CRC.

4. "Failure to maintain lists of qualified contractors, Par 4.1 and 4.5, AP 3-11 . . ."

Comment: It is acknowledged that the Department does not have a centralized list of qualified contractors nor does it use Form 1014. To date, informal lists have been maintained by Program Directors based on inquiries received, contacts with peers and meetings with professional groups. This information will be formalized and brought into conformance with purchasing regulations. However, it should be noted that health professionals do not always respond to requests for the kind of information included on Form 1014 and modifications to the form and process may be necessary. This issue will be reviewed with the Purchasing Division.

5. "Failure to submit for CRC an interdepartmental procedure to be used in the qualification and selection of contractors . . ."

Comment: I believe there is a typographical error in the AP since the thrust of AP 3-10 is intradepartmental, not interdepartmental processing of documents. The Department will update current Departmental procedures and forward them for CRC approval.

6. "Failure to issue 'notice to proceed' . . ."

Comment: Health Department contracts for professional services generally contain an effective date and language that the Department will "schedule" clinic sessions or "refer" clients. The "notice to proceed" concept does not lend itself to these types of contracts. This is a requirement which will be reviewed with the Purchasing Division in the pending revisions to the Interim Procedures.

7. "Failure to establish written guidelines for the records to be maintained by contractors . . ."

Comment: The Department includes the standard audit clause required by the County Attorney in all contracts. Further, a "Reports" clause is incorporated when the contractor is expected to deliver certain material. A meeting is scheduled with the Chief of the Auditing Division and this item will be discussed with him.

8. "An original invoice was voided . . . a new invoice was created by the Program Manager . . . to charge services to another contract. . . ."

Comment: The Program Manager, believing that he had expended all funds in one area, exercised very poor judgement in by-passing the usual administrative processes for amending contracts or obtaining additional funds. I have met with the Division Director responsible for this program and he, in turn, will re-emphasize to his staff the importance of following contract amendment procedures when a change is required. With respect to the Program Manager, the Division Director and I agree that he is a valued professional who allowed expediency to supplant good contract procedures. In the circumstances, I propose to discipline the Program Manager in the form of an Oral Admonishment (Reference Paragraph 21.3a, Personnel Regulations).

9. "The Contractor was paid for more hours than worked . . ."

Comment: Although not clearly delineated in the contract reviewed by the OLO evaluator, the Division Director advises me that it is understood by contract monitors and contractors that preparation hours are billable. The contractor, Ms. Gonzalez, has also provided a statement that this was her understanding of appropriate, billable hours. Thus, preparation hours were included in the totals presented for payment. As new contracts are written, this ambiguity is being clarified through more specificity in the compensation clause.

DAS:do

3. Comments of Anne Gonzalez, the Contractor.

Andrew Mansinne, Jr., Director
Office of Legislative Oversight
County Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

March 19, 1985

Dear Mr. Mansinne:

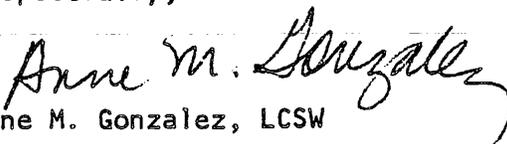
The following is a response to Ms. Deborah Snead's report. Although I concurred with what Ms. Snead wrote in the report regarding my involvement in contracts with Montgomery County, in reviewing the report again, I feel it important to respond to something which was discussed but overlooked in her interview with me on 2/7/85. When I was originally hired by the Health Department, I accepted the contract only if I could be reimbursed for preparation time as well as on-site supervision. The hourly fee at that time was even lower than the present \$18.50 and much lower than the fee obtained by consultants with my background. As I was expected to prepare lectures and later review therapy tapes for the three-hour on-site visits, I needed to be reimbursed for preparation time. (My fee then for such consultation was \$45.00 per hour. I am presently reimbursed by Shepherd Pratt Hospital for similar work at \$50.00 per hour, which includes travel time, and I am reimbursed by Catholic University at \$60.00 per hour.)

At the present rate of \$18.50 I could not possibly afford to do on-site work and preparatory work. At Catholic University where I sometimes work as a lecturer, one is expected to put 1½ hours in for each hour taught. That is what I contracted for at the Health Department.

In conclusion, I feel the compensation for my three-hour on-site visit and four-hour compensatory time is warranted.

If I can be of any assistance, please contact me. I do hope Ms. Snead's report moves the Health Department to a clearer and fairer contracting system and reimbursement policy with outside contractors, for the Health Department and contractor's sake.

Respectfully,


Anne M. Gonzalez, LCSW

cc: D. Swetter, M.D.
R. Jardin, Ph.D.