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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 28, 2014

Ann Marie T. Sullivan, M.D.
Commissioner
New York State Office of Mental Health
44 Holland Avenue
Albany, NY 12229

Re: OMH Contract With Shorefront
Mental Health Board - Compliance
With Prevailing Wage Law
Report 2013-S-62

Dear Dr. Sullivan:

According 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, we audited the Office of Mental Health, South Beach Psychiatric Center's contract with Shorefront Mental Health Board Inc. to determine whether its janitorial workers received prevailing wage rates and supplemental benefits and payments as required under contract C000199. The audit covered the period November 1, 2011 through March 31, 2014.

Background

The Shorefront Mental Health Board (Shorefront) was incorporated in 1989. Its mission is to provide support for the treatment and transition programs of the South Beach Psychiatric Center in Staten Island (South Beach). Shorefront, which operates out of the South Beach outpatient facility in Coney Island, contracts with the New York State Office of Mental Health (OMH) to provide janitorial services at various South Beach outpatient facilities. This work is done by an entity Shorefront created, Brooklyn Brite. New York State Labor Law requires contractors and subcontractors to pay the prevailing rate of wage and supplements (fringe benefits) set for the locality where the work is performed to all workers under a contract for building service work with a public agency.

The contract between OMH and Shorefront was approved under OMH's "Buy OMH" program. "Buy OMH" is a statewide job training and employment initiative developed in 1987 by OMH to meet the work readiness and job needs of New Yorkers with a psychiatric disability. According to OMH, it has been recognized as a vital component of the rehabilitation and recovery

process for many New Yorkers experiencing psychiatric difficulties. Under this program, Shorefront was granted preferred source status, which allowed Shorefront to become the approved vendor for the contract without a formal competitive bidding process.

The contract (C000199) requires Shorefront to provide janitorial services at six of South Beach's Outpatient Department (OPD) facilities located in Brooklyn. These services may also include snow removal at certain locations, as specified in the contract, for an additional fee. This contract was for \$2.3 million and covered the period November 1, 2011 through October 31, 2016. The contract also continued the services Shorefront provided to South Beach in a previous contract (C000177) for \$1.3 million, which covered the period May 1, 2007 through October 31, 2011. These contracts specify that the contractor must pay its janitorial workers at the prevailing wage rates. Shorefront uses an outside service provider to process its bi-weekly payrolls, sending the payroll information to the outside provider, which then prepares the checks for distribution to the employees. Shorefront submits monthly invoices to South Beach for payment for the cleaning services provided at the six OPD facilities. From November 1, 2011 through March 31, 2014, South Beach paid Shorefront \$976,863 for these services.

Results of Audit

We found that Shorefront did not pay its janitorial workers the prevailing wage rates during a significant portion of our audit period. Further, Shorefront/Brooklyn Brite management tried to disguise the non-compliance with the prevailing wage law by misrepresenting the hours worked and hourly rates paid on certified payrolls submitted to OMH. We estimate Shorefront underpaid wages by at least \$123,224 during calendar year 2013. In addition, the amount underpaid may be higher because janitorial workers may have been entitled to supplemental and other benefits that they were not paid. Based on the nature of our findings, Shorefront has likely underpaid its janitorial workers since November 1, 2011, when this contract started. Also, there is material risk that Shorefront underpaid its janitorial workers on other prior and current contracts with South Beach as well.

Prevailing Wage

In accordance with Article 9 of the New York State Labor Law and Appendices A and D of the contract, Shorefront is required to pay its janitorial workers the prevailing hourly wage rate, plus supplemental benefits, for regular and overtime hours worked. Shorefront must also pay for vacation days, personal days, sick days, and specific holidays as outlined by the New York State Department of Labor. Shorefront is required to complete and submit certified payroll records to South Beach officials on a monthly basis. To ensure employees are paid according to prevailing wage guidelines, South Beach must maintain payroll records showing the hours and days worked by each employee and the wages paid to them.

On January 15, 2014, we met with Shorefront officials to discuss our audit protocols and to ask questions about prevailing wage. During the meeting we were informed that the Shorefront workers are paid by Brooklyn Brite, which is a d/b/a of Shorefront. However, Brooklyn Brite's Chief Operating Officer (COO) stated that the company is not registered in the State of New York as a

d/b/a of Shorefront, and that janitorial workers are not paid the prevailing wage rates, although they should be under the contract. He also admitted the certified payrolls he submits to South Beach officials monthly misrepresented both the hours the janitorial workers actually worked and the hourly rates they were actually paid.

Brooklyn Brite's COO and Shorefront's President justified not paying the prevailing wage hourly rates by stating workers would lose other government benefits because their incomes would be too high, and they were not professional cleaners. The COO claimed the workers were technically earning the prevailing wage rate because they work at a very slow pace due to their medical conditions and medications. He stated that it consequently takes them three times longer than a professional cleaner to complete the same task, and therefore, he pays them for the equivalent amount of work. The President stated that the company retained a law firm to assist them with obtaining a waiver that would exempt them from paying the prevailing wage rate to their janitorial workers because of these special circumstances. However, they did not obtain a waiver.

Based upon the additional information from Shorefront (Brooklyn Brite), we analyzed the payroll vendor records obtained from Shorefront's outside accountant and compared certified payroll information submitted by Shorefront (Brooklyn Brite) to determine if janitorial workers were underpaid and if the certified payrolls accurately reflected hours worked and payments made. We calculated the payroll expense for calendar year 2013 using the most recent payroll information, and found Shorefront underpaid 26 of its janitorial workers at least \$123,224 for the year. We used a conservative method to calculate the underpayment amount because prevailing wage rates are determined based upon various conditions. We took the minimum prevailing wage rate an employee could earn in 2013 and multiplied that rate by the number of hours he/she worked for the entire year. From that figure, we subtracted the amount the employee was paid according to payroll information to determine the amount underpaid.

In addition to payroll vendor information, we obtained a copy of a memorandum Shorefront officials received from a law firm it retained regarding its Board's obligation to ensure that Shorefront paid the prevailing wage rates. The memorandum was dated February 2010 (or 20 months before contract C000199 started on November 1, 2011.) According to the memorandum, the Board was at risk of being liable for back wages to employees who worked on State contracts and were paid less than the prevailing wage. The memorandum also stated that certain directors and officers of the Board could face personal liability for back wages and benefits.

To determine if there was any evidence that the organization could have obtained a waiver which would exempt it from paying prevailing wage rates, we reviewed Shorefront's Board meeting minutes. The minutes dated October 20, 2011 (only 11 days before Contract C000199 started) showed that the Board discussed legal issues and stated, "Our lawyer has been unable to find a waiver in the so-called prevailing work wage for some of our employees. We now have liability insurance for all our workers. In addition, the board has long held Directors and Officers liability insurance." Moreover, we found no indication that Shorefront officials could obtain a waiver that would release the organization from paying prevailing wage rates.

Discrepancies in Payroll-Related Records

After our initial meeting with Shorefront officials in January 2014, the COO and President assured us that they took corrective action to comply with the contract terms and conditions and started paying their janitorial workers at prevailing wage rates. To determine if the information provided by the President and COO was accurate, we visited the six OPDs and interviewed South Beach officials and 14 janitorial workers. At the time of our audit fieldwork, we found all workers were receiving the prevailing wage rate, but they were paid for fewer hours than they actually worked.

After each meeting at the OPDs with South Beach officials, we met with the janitorial workers to determine if they were paid the correct prevailing hourly wage rate. During those interviews we were informed:

- Although all 14 were paid the prevailing hourly wage rate, three were unaware of that requirement;
- Although they were paid prevailing wage rates, six workers stated they were paid for fewer hours than they actually worked; and
- The COO instructed workers to fax him their time sheets with only their signatures and no entries for hours worked. A worker provided us with a written note he received that read, "sign in don't put the hours [the COO] will fix it." Also, four workers stated they were instructed to destroy their time sheets once they were faxed.

We investigated further to determine if the janitorial workers were paid for fewer hours than they actually worked. We reviewed all available time sheets, paycheck stubs, and payroll vendor reports. The evidence corroborated the workers' assertions that they were paid for fewer hours than they actually worked.

Specifically, we obtained blank time sheets faxed to the COO with the workers' signatures for each day they worked, but with no start and end times (or actual hours worked) on the time sheets. These time sheets were obtained from personnel files in the COO's office. In one instance a worker disregarded the COO's direction and completed his entire time sheet. This worker posted a total of 72 hours to time sheets for January 20, 2014 through February 14, 2014 and he faxed the time sheets to the COO. However, paystubs and payroll vendor records show this worker was paid for only 22 hours at the prevailing wage rate and 12 hours at the supplemental benefits rate. Thus, this worker was not paid 50 hours (72-22) at prevailing wage rate and 60 hours (72-12) at the supplemental benefits rate. We asked this worker if he had discussed the matter with the COO. He stated "Yes" and added that the COO informed him that if he is paid for the actual number of hours worked, the COO will have to lay off workers.

Other paystubs and payroll vendor information we reviewed reflect the same discrepancy, workers being compensated for one set of hours at the prevailing wage rate and another set of hours at the supplemental benefit rate. Based on this evidence, we believe that employees may have been paid for fewer hours than they actually worked for the period January 20, 2014 through March 14, 2014. We believe this practice was discontinued when we began visiting the

outpatient facilities, when the janitorial workers were required to reduce the number of hours they worked significantly (to 10 hours per week from the 18 hours they normally worked). Several workers advised us the COO told them that things would revert to the normal when the auditors left.

We asked the COO why workers were instructed to fax him signed time sheets which lacked details of the hours they worked. The COO stated that his assistant requested the time sheets in this fashion because the workers did not complete them correctly. However, our review of the workers' faxed time sheets for the period January 20, 2014 through March 14, 2014 indicated they were consistent with the time sheets completed prior to that period. Thus, there was no evidence to support the COO's claim that workers prepared their time sheets incorrectly.

Payroll Certifications

According to Appendix C of the contract and State Labor Law, the contractor and/or subcontractor must attach to every invoice a current transcript of the original payrolls that covers the time period on the invoice, subscribed and affirmed as true under penalty of perjury. This transcript is a required deliverable of the contract and is a condition of payment. Nevertheless, South Beach paid Shorefront \$359,407, between November 2011 and August 2012, although South Beach never received a certified payroll from Shorefront officials. When we asked South Beach officials why they did not require Shorefront to submit certified payrolls with its invoices, they told us it was not their practice to request certified payrolls from contract vendors at that time. Officials added that they started requesting certified payrolls in September 2012.

Shorefront began to submit certified payrolls to South Beach in September 2012. However, we noted discrepancies in the dollar amounts paid workers per the certified payrolls and the payroll vendor's records. These discrepancies were in addition to those related to the number of hours the workers were paid per the certified payrolls and hours per the vendor's records. For example, the payroll vendor record showed that one employee was paid \$153 for 18 hours of work, while the certified payroll showed that the employee worked only four hours and earned \$91.60. For another employee the payroll record showed that the employee worked for 36 hours and was paid \$360, while the certified payroll showed that this employee worked only 14 hours and was paid \$320.40.

Based on our review of pertinent bank statements, we verified that the workers received checks for the amounts noted by the payroll vendor's records. Hence, the amounts shown on the certified payrolls were incorrect. In addition, one worker listed on the certified April payroll was not the individual listed as the payee on the corresponding paycheck. Moreover, these payrolls were certified by Shorefront's President, although Brooklyn Brite's COO admitted to us that they were incorrect.

Recommendations

OMH should:

1. Develop and implement procedures to ensure all contractors comply with the prevailing wage law. Such procedures should include, but not be limited to:
 - Enforcing the requirement that contractors submit certified payrolls and making sure that they are accurate;
 - Formally reviewing certified payrolls and other related documentation as needed to ensure that payments to workers are correct; and
 - Promptly addressing issues of non-compliance with contract requirements and other regulations and documenting the actions taken.
2. Work with the Department of Labor to determine the amount of back wages and benefits due to workers for the periods that they were underpaid.

Audit Scope, Objective and Methodology

The objective of our examination was to determine whether Shorefront Mental Health Board Inc. paid its janitorial workers prevailing wage rates and supplemental benefits and payments as required by contract C000199. The audit covered the period November 1, 2011 through March 31, 2014.

To accomplish our objective, and assess related internal controls, we examined the terms and conditions of the Shorefront contract, vouchers, payroll records (including records produced by Shorefront's payroll processing vendor), and other relevant supporting documents. Also, we interviewed South Beach, Shorefront (including its affiliate, Brooklyn Brite) and OMH management and employees.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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.

Reporting Requirements

A draft copy of this report was provided to Office of Mental Health officials for their review and formal comment. Their comments were considered in preparing the final report and are attached in their entirety at the end of the report.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Mental Health 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.

Major contributors to this report were Abe Fish, Melissa Little, Devisha Gujjar, Cheryl May, Anthony Belgrave, and Daniel Rossi.

We thank the management and staff of the Office of Mental Health, the South Beach Psychiatric Center, and the Shorefront Mental Health Board Inc. for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

Carmen Maldonado
Audit Director

cc: J. Russo, OMH
T. Matthews, OMH - South Beach PC
S. Knopf, Shorefront Mental Health Board
NYS Division of the Budget

Agency Comments



State of New York
Andrew M. Cuomo
Governor



Office of Mental Health
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September 8, 2014

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

Dear Ms. Maldonado:

The Office of Mental Health has reviewed the Office of the State Comptroller's (OSC's) draft audit report entitled, "OMH Contract With Shorefront Mental Health Board – Compliance With Prevailing Wage Law" (2013-S-62). Our comments to the findings and recommendations are enclosed.

The Office of Mental Health appreciates the Office of the State Comptroller's efforts to recommend improvements in our operations.

Many thanks for your continued help and cooperation.

Sincerely yours,

Martha Schaefer Hayes
Executive Deputy Commissioner

Enclosure



**OFFICE OF MENTAL HEALTH
RESPONSE TO THE OFFICE OF THE STATE COMPTROLLER
DRAFT AUDIT REPORT 2013-S-62
CONTRACT WITH SHOREFRONT MENTAL HEALTH BOARD
COMPLIANCE WITH PREVAILING WAGE LAW**

Overall OMH Comments

OMH officials have reviewed the findings and recommendations in the Office of the State Comptroller's (OSC) report entitled "OMH Contract with Shorefront Mental Health Board (Shorefront) – Compliance with Prevailing Wage Law" (2013-S-62). OMH recognizes that the audit results are intended as a resource to assist us in improving our operations. We are taking steps to implement the recommendations OSC has set forth in its review.

Importantly, it should be noted that based on OSC's (then ongoing) review, both contracts held between South Beach Psychiatric Center (South Beach) and the Shorefront were terminated for cause effective close of business July 18, 2014. In addition to contract C000199, a second contract (C000201) with Shorefront for janitorial services at the Office of Alcoholism and Substance Abuse Services Alcohol Treatment Center located on SBPC grounds was also terminated.

Clearly, Shorefront has been in violation of not only the terms of the contract, but Prevailing Wage Law as well. In June 2013, when contract C000201 was being reviewed by OSC, Shorefront gave assurances to the State that the funding authorized on the contract was sufficient to fully cover expenses, including the payment of wages consistent with prevailing wage requirements. OMH is greatly troubled that: (a) notwithstanding those assurances, it appears that, from the outset, Shorefront did not intend to pay prevailing wage; (b) certified payrolls were falsified; and (c) workers were both not compensated for actual time worked and not compensated at the legally-mandated rates of pay required by contract C000199. OSC's review identified Shorefront's intent to not only deceive the State, but to engage their own employees in the subterfuge without the knowledge of those employees and to their financial detriment. Many of these employees are current and former patients of South Beach and are living with mental illness. OMH will not conduct business with vendors who take advantage of the population whose recovery is integral to Agency mission.

OMH's Responses to OSC's Recommendations

OSC Recommendation No. 1

1. Develop and implement procedures to ensure all contractors comply with the prevailing wage law. Such procedures should include, but not be limited to:
 - Enforcing the requirement that contractors submit certified payrolls and making sure that they are accurate;

- Formally reviewing certified payrolls and other related documentation as needed to ensure that payments to workers are correct; and
- Promptly addressing issues of non-compliance with contract requirements and other regulations and documenting the actions taken.

OMH Response

Agency contract boilerplate language clearly outlines the responsibilities of the Agency and vendor related to prevailing wage requirements. The requirement that the vendor pay prevailing wages appears in multiple locations in the contract, most significantly in Appendix D "Program Work Plan." Prevailing wage references also appear in Appendix A, article 6 "Wage and Hours Provisions," Appendix A-1, article 18 which provided for "Prevailing Wage Cost Escalation," and Appendix C "Payment and Reporting Schedule" under the heading "Requirement for All Contracts When a Prevailing Wage Schedule Applies."

In October 2012, OMH's Consolidated Business Office issued a directive to facility business offices requiring them to submit certified payrolls as supporting documentation for payment to a vendor. This directive included the two active janitorial services contracts between Shorefront and South Beach. For all trades covered by Articles 8 and 9 of the Labor Law, if a certified payroll is not provided along with an invoice for work performed, OMH will not authorize payment to the vendor.

OMH has made this requirement clear to its network of State-operated psychiatric centers, and will provide a comprehensive training program on prevailing wage and reporting requirements in fall 2014 for all facility business officers. This training will include the procedures contained in OSC's first recommendation to ensure that all contractors comply with the prevailing wage law.

OSC Recommendation No. 2

Work with the Department of Labor to determine the amount of back wages and benefits due to workers for the periods that they were underpaid.

OMH Response

OMH is fully committed to working with the Department of Labor (DOL) to provide whatever assistance is needed to calculate the amount of back wages and benefits owed workers. As part of this effort, OMH anticipates that DOL will require much of the same payroll records and supporting documentation from Shorefront that OSC obtained in connection with its audit. Given that OMH does not have access to the Shorefront records, and OSC appears to already have the majority of those required records, OSC's assistance will also be needed. The bottom line is that, whatever is required, OMH will work cooperatively with both DOL and OSC to accomplish the required outcome.