New York State Office of the State Comptroller
Thomas P. DiNapoli
Division of State Government Accountability

Compliance With the Reimbursable Cost Manual

State Education Department
Bilinguals Inc.

Report 2012-S-65 June 2014

Executive Summary

Purpose

To determine whether the costs reported by Bilinguals Inc. (Bilinguals) on its Consolidated Fiscal Reports (CFRs) were calculated properly, documented adequately, and allowable pursuant to the State Education Department's (SED) Reimbursable Cost Manual (Manual). Our audit covered the three fiscal years ended June 30, 2011.

Background

Bilinguals provides Special Education Itinerant Teacher (SEIT) services and Preschool Integrated Special Education Services (collectively referred to as the Programs) to children residing in New York City as well as Nassau, Suffolk and Westchester counties. Pursuant to the State Education Law, SED establishes reimbursement rates for special education providers based on the financial information reported in their CFRs. For the three fiscal years ended June 30, 2011, Bilinguals' Programs reported a total of $13.3 million in reimbursable costs.

Key Findings

We identified $875,729 in non-reimbursable costs including:

- $243,950 in compensation paid to 17 individuals who did not provide services to the Programs during the audit period; $44,277 in improperly allocated personal service costs; $27,329 in excessive compensation paid to the Executive Director (ED) and the Assistant Executive Director (AED); and $218,682 in bonus payments that did not comply with Manual guidelines;
- $29,722 paid for the personal benefit of Bilinguals officials and staff, including but not limited to, the costs for a Manhattan apartment, cable television and three vehicles for the ED and AED; and $15,895 paid for gift cards, clocks, parties and funeral expenses (for a Billinguals employee); and
- $205,695 paid for international recruitment expenses for unqualified individuals and for individuals who did not come to work for the Programs.

Key Recommendations

To SED:

- Review the recommended disallowances, adjust Bilinguals' CFRs and revise Bilinguals' tuition reimbursement rates, as appropriate.
- Work with Bilinguals officials to help ensure their proper reporting of reimbursable costs.

To Bilinguals:

- Ensure that reimbursable costs reported on the CFRs comply with Manual requirements.

Other Related Audits/Reports of Interest

Bilingual SEIT and Preschool, Inc.: Compliance With the Reimbursable Cost Manual (2011-S-13)
IncludED Educational Services, Inc.: Compliance With the Reimbursable Cost Manual (2010-S-59)

State of New York
Office of the State Comptroller

Division of State Government Accountability

June 26, 2014

Dr. John B. King, Jr.
Commissioner
State Education Department
State Education Building - Room 125
89 Washington Avenue
Albany, NY 12234

Ms. Julia Matuza
Chief Executive Officer
Bilinguals, Inc. and Affiliates
7000 Austin Street, Suite 200
Forest Hills, NY 11375

Dear Dr. King and Ms. Matuza:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the State Education Department and Bilinguals Inc. entitled *Compliance With the Reimbursable Cost Manual*. This audit was performed pursuant 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this draft report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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This report is also available on our website at: www.osc.state.ny.us

Background

Bilinguals, Inc. (Bilinguals) is a non-public, for-profit special education institution that provides Special Education Itinerant Teacher (SEIT) services and Preschool Integrated Special Education (collectively referred to as the Programs) to children between the ages of three and five. Bilinguals, based in Forest Hills, New York, provides services to children located throughout the New York City metropolitan area. Bilinguals' staff, which served 372 students during the 2010-11 school year, provides these services in the students' homes, schools or neighborhood community centers. During the audit period, Bilinguals was affiliated with six other educational institutions owned by Bilinguals' Executive Director (ED) and her spouse, the Assistant Executive Director (AED).

The New York City Department of Education (DoE), as well as the other local governments referring students to Bilinguals, pays for Bilinguals' Program services using rates established by the New York State Education Department (SED). SED develops these rates using the financial information reported on Bilinguals' annual Consolidated Fiscal Reports (CFRs) filed with SED. SED, in turn, reimburses DoE and the other local governments for about 59 percent of their payments to Bilinguals.

To qualify for reimbursement, provider costs must comply with SED's Reimbursable Cost Manual (Manual). The Manual provides specific guidance to providers on cost eligibility and documentation requirements. Reimbursable costs must be reasonable, program-appropriate and properly documented.

For the three fiscal years ended June 30, 2011, Bilinguals reported approximately $13.3 million in reimbursable costs for the audited Programs.

Audit Findings and Recommendations

For the three years ended June 30, 2011, we identified $875,729 in reported costs that do not comply with Manual requirements for reimbursement. These costs include $541,405 in personal service costs, $128,629 in non-personal service costs and $205,695 in international recruitment costs.

Personal Service Costs

According to the Manual, personal service costs, which include all taxable salaries and fringe benefits paid or accrued to employees on the agency's payroll, must be reported on the CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). The time and attendance of individuals whose salaries are charged to the Programs must be documented by an official time and attendance record or similar document. The salaries of individuals who do not work solely for the Programs must be allocated based on their actual work effort or other reasonable allocation method (e.g., percentage of expenses). During fiscal years 2008-09 through 2010-11, Bilinguals reported $7,988,731 in reimbursable personal service costs.

Undocumented and Inappropriate Payments

To determine whether the personal service costs charged to the Programs were supported and appropriate, we performed unannounced physical observations (floor checks) of 64 employees whose salaries were charged to the Programs to determine whether they could be located working at those Programs during their regularly scheduled work hours. We also interviewed these 64 employees to determine their job responsibilities and the amount of time each devoted to the Programs. In addition, we reviewed the personnel files and payroll registers for 60 sampled employees, including 18 of the above 64, to determine whether the salaries charged to the Programs were accurate. We identified $243,950 in unsupported or inappropriate personal service costs as follows:

- $131,254 in salaries and fringe benefits for three individuals who were actually working for an affiliated program (Early Intervention) during the audit period;
- $76,119 in salary and fringe benefits during fiscal years 2008-09 and 2009-10 for 11 individuals who did not work on the Programs until October 2010 - four months after the end of the 2009-10 fiscal year;
- $27,752 in salary and fringe benefits during fiscal year 2008-09 for a teacher's aide and a psychologist. We could not identify the persons who filled these positions and therefore could not verify their salaries or the time spent on the Programs; and
- $8,825 in salary and fringe benefits during fiscal year 2010-11 for an individual who worked for an affiliated out-of-state entity during that time period.

Employee Bonuses

The Manual defines reimbursable bonus compensation as a non-recurring, non-accumulating lump sum payment in excess of regularly scheduled salary and not directly related to hours worked. Such bonuses must be available to all employees and based on merit as measured and supported by employee performance evaluations.

During the audit period, Bilinguals awarded $2,011,016 in bonuses to employees. We could not readily identify how much of this amount was charged to the Programs because Bilinguals did not report bonuses separately on its CFRs. We examined the support for the bonus payments, made to a random sample of 30 employees, totaling $276,726 and identified $218,682 in payments that did not comply with Manual requirements, as follows:

- $153,793 in bonus payments to three direct charge instructional employees that were not based on merit but on the number of hours each employee worked; and
- $64,889 in bonus payments to 20 indirect charge (allocated time) employees that were not supported by performance evaluations.

Excessive Allocation of Personal Service Expenses

We identified 17 office-based Bilinguals employees whose aggregate salaries of $3.3 million during the audit period were over-allocated to the Programs. There were no records documenting the amount of time each of these employees devoted to the various programs and affiliates. To calculate a supportable allocation of their salaries we used the ratio expense method - comparing the total expenses of the Programs with the total expenses of all Bilinguals-related programs and affiliates. We determined that $680,939 should have been charged to the Programs. However, Bilinguals charged the Programs $725,216 for these employees - an over-allocation of $44,277.

Bilinguals officials informed us that they made corrections to charged salaries for fiscal years 2008-09 and 2009-10, but did not provide us with support for their assertions.

Excessive Executive Compensation

The Manual requires that compensation paid to a provider's ED and AED may not exceed the regional median compensation paid to comparable personnel in public schools for similar work and hours of employment. We determined that Bilinguals overcharged SED a total of $27,329 in executive compensation for the Programs during our audit period, as follows:

- During the 2009-10 fiscal year, Bilinguals charged SED $35,790 for the ED's salary. Based on the regional median compensation limits, only $18,584 in salary should have been charged, resulting in an overcharge of $17,206.
- Similarly, Bilinguals charged SED $24,228 and $21,517, respectively, for the AED's 2008-09 and 2010-11 salaries. Based on the regional median compensation limits, the combined AED compensation for these two periods should have been $35,622, resulting in an

overcharge of $10,123.

Excessive Severance Pay

Three of our sampled employees were paid severance pay during the audit period. According to the Manual, SED will reimburse providers for the severance pay it awards to its employees provided the cost does not exceed two weeks' pay for a full-time employee. We reviewed the personnel files for the three employees to determine their salaries and whether SED was charged the correct amount of severance pay. We determined that the Programs were overcharged a total of $7,167 for these employees. For example, one employee's biweekly salary charged to the Programs was $575, yet the severance pay charged for this employee was $4,537, an overcharge of $3,962.

Non-Personal Service Costs

For the three fiscal years ended June 30, 2011, Bilinguals reported a total of $5,071,120 in non-personal service (NPS) costs on its CFRs charged to the Programs. We sampled 20 CFR expense categories, totaling $245,306, and identified $128,629 of expenses that did not comply with Manual requirements.

The Manual requires expenses to be reasonable, necessary and directly related to the program for which reimbursement is requested. Expenses of a personal nature, entertainment expenses and meals are specifically excluded from reimbursement. We recommend SED recover $97,743, as follows:

- $38,863 for unrelated staff travel expenses;
- $25,379 for employee meals (including $3,752 for parties);
- $16,816 paid to non-Program employees for their college tuition;
- $12,143 in gift certificates, clocks and funeral expenses (for a recent hire);
- $10,931 in rental expenses for the ED's and the AED's personal living quarters (so they wouldn't be too far from the office);
- $8,166 for non-Program-related advertisements and recruitment;
- $5,615 for non-Program-related cell phone expenses;
- $1,864 for non-Program-related evaluations and translations; and
- $830 in cable TV expenses for the above noted apartment.

Note: These disallowed expenses add up to $120,607. When we discussed these expenses with Bilinguals officials, they showed us $22,864 in Programs-related expenses that were not initially charged to the Programs. Our recommended disallowance is the net of our findings and these additional bona-fide Programs-related costs.

Unsupported Vehicle Expenses

For the three fiscal years ended June 30, 2011, Bilinguals reported various expenses relating to three motor vehicles (a 2009 Lexus SUV, a 2011 Lexus SUV and a 2010 Honda CR-V) utilized by the ED and AED, as well as personal vehicles used by other administrative staff. The $17,961 charged to the Program for these vehicles included lease payments, loan interest, insurance premiums, depreciation and repairs, and maintenance for the three vehicles assigned to the ED and AED, and gasoline, parking and tolls for these and other personal vehicles used by Bilinguals staff. According to the Manual, for these costs to be reimbursable, the provider must demonstrate a Program-related need for the vehicles, and document usage via a "vehicle usage log," which details the vehicle operator; points of destination, dates and times of travel; and the purpose of each trip. Bilinguals officials did not maintain the required vehicle logs or any other documentation to support the Program-related use of these vehicles.

Miscellaneous Non-Personal Service Disallowances

We recommend an additional $12,925 in reimbursed expenses be recovered, as follows:

- $11,291 in equipment lease expenses that were reported twice on Billinguals' CFR. Bilinguals reported these costs as both an equipment expense and a supplies expense; and
- $1,634 in over-allocated telephone expenses.

International Recruitment Costs

During our audit we identified $279,552 categorized on the Programs' CFRs as "international recruiting" costs. According to Bilinguals officials, due to a recognized shortage of New York-based bilingual (English/Spanish) special education teachers and therapists, they find it necessary to recruit potential employees from South America (e.g., Argentina, Peru and Columbia). Recruitment costs include paying consultants for identifying foreign candidates who qualify for H-1B immigration visas (which allow U.S. employers to temporarily employ foreign workers in specialty occupations) and associated H-1B visa costs, which can range from $500 to $2,000 for each filing.

When we prepared our draft report, the Manual was silent as to reimbursable foreign recruiting costs. As such, we based our findings on our conversations with SED officials, who said they would expect to see that the provider requesting such reimbursement was able to document its unsuccessful domestic recruitment efforts. Further, foreign recruits should be "program-ready" - meaning they already possess the bilingual and job-specific skills necessary for the positions. (SED officials subsequently included these criteria in its revised Manual, effective for fiscal 2013-14.)

Despite these significant charges, only eight internationally recruited bilingual teachers and therapists were actually hired during the audit period for the Programs.

We are disallowing the majority of these costs ($205,695), which include:

- $54,655 in tuition costs to teach English to the foreign recruits;
- $48,977 in H-1B visa immigration fees for persons not working for the audited programs;
- $28,772 in associated travel expenses without Program-related support;
- $17,629 in expenses for visa extensions for persons not working for the audited programs; and
- $13,807 for temporary housing for recruits.

Recommendations

To SED:

1. Review the recommended disallowances resulting from our audit and make the appropriate adjustments to Bilinguals' CFRs and reimbursement rates, as appropriate.

2. Work with Bilinguals officials to help them comply with Manual provisions.

To Bilinguals:

3. Ensure that costs reported on your annual CFRs comply with Manual requirements.

Audit Scope and Methodology

We audited the support for, and the propriety of, the expenses reported on Bilinguals' annual CFRs for the three fiscal years ended June 30, 2011. The objective of our audit was to determine whether the costs reported on Bilinguals' CFRs were calculated properly, documented adequately and reimbursable pursuant to the Manual.

To accomplish our objectives, we reviewed the SED Manual, Bilinguals' CFRs and relevant financial records for the audit period. We also interviewed Bilinguals officials, staff and independent auditors to obtain an understanding of their financial and business practices. In addition, we assessed a sample of reported costs to determine whether they were supported, SEIT-appropriate and reimbursable. Our review of Bilinguals' internal controls focused on payroll and non-personal service procurement operations.

We conducted our audit in accordance with generally accepted government auditing standards. These 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 objectives. We believe that the evidence obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

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 management functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant 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.

Reporting Requirements

A draft copy of our report was provided to SED and Bilinguals officials for their review and comment. Their comments were considered in preparing this final report and are included in their entirety at the end of the report.

In response to our draft report, SED officials agreed with our recommendations and noted that they may pursue additional actions based upon the nature of our findings.

Conversely, Bilinguals officials assert that a significant portion of our disallowances are in fact bona fide program expenses, and the amount of bona fide program expenses they paid during the audit period more than offset our recommended disallowances. Their response goes on to detail their disagreement with our individual findings. We address their areas of disagreement in our State Comptroller's Comments also attached to the end of the report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the State Education Department 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 if the recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit

Bilinguals Inc.
Schedule of Submitted, Disallowed, and Allowed Program Costs (Codes 9135 and 9160)
Fiscal Years 2008-09, 2009-10 and 2010-11

Program Costs	Amount Per CFR	Amount Disallowed	Amount Allowed	Notes to Exhibit
Personal Services				
Direct Care	$7,153,119	$359,425	$6,793,694	
Administrative	$835,612	$181,980	$653,632	
Total Personal Services	$7,988,731	$541,405	$7,447,326	A,B,C,D,F
Non-Personal Services				
Direct Care	$4,940,837	$103,043	$4,837,794	
Administrative	$130,283	$25,586	$104,697	
Total Non-Personal Services	$5,071,120	$128,629	$4,942,491	A,E,G
International Recruiting				
Direct Care	$193,546	$192,753	$793	
Administrative	$86,006	$12,942	$73,064	
Total International Recruiting	$279,552	$205,695	$73,857	A
Total Program Costs	**$13,339,403**	**$875,729**	**$12,463,674**	

Notes to Exhibit

The following Notes refer to specific sections of SED's Reimbursable Cost Manual used to develop our recommended disallowances. We summarized the applicable sections to explain the basis for each disallowance. We provided the details supporting our recommended disallowances to SED and Bilinguals officials during the course of our audit.

A. Section II - Costs must be reasonable, necessary, program-related and sufficiently documented.
B. Section II.14.A.4(a) - Compensation paid to a provider's Executive Director and Assistant Executive Director may not exceed the regional median compensation paid to comparable personnel in public schools for similar work and hours of employment.
C. Section II.14.A.4(c) - For any individual who works for multiple programs or entities (including organizations that have a less-than-arm's-length relationship with the approved program), the allocation of compensation must be supported by time and effort reports or equivalent documentation.
D. Section II.14.A.10 - Bonus compensation shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment(s) in excess of regularly scheduled salary which is not directly related to hours worked. Bonus compensation may be reimbursed if based on merit as measured and supported by employee performance evaluations. Bonus compensation restricted to only administrative staff is not reimbursable.
E. Section II.21.B - All personal expenses, such as personal travel expenses, laundry charges, beverage charges, gift certificates to staff and vendors, etc., are not reimbursable unless specified otherwise in the Manual.
F. Section II.46.B.2 - The cost of severance pay is reimbursable provided that such payment is required by law or by employer-employee agreement and the cost of the severance pay does not exceed two weeks' pay for a full-time employee.
G. Section III.1.J.2 - Vehicle use must be documented with individual vehicle logs that include at a minimum: the date and time of travel, to and from destinations, mileage between each destination, purpose of travel and name of traveler.

Agency Comments - State Education Department

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

DEPUTY COMMISSIONER
Office of Performance Improvement and Management Services
O: 518.473-4706
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April 24, 2014

Mr. Frank Patone
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236

Dear Mr. Patone:

The following is the New York State Education Department's (Department) response to the draft audit report (2012-S-65) of the State Education Department Bilinguals, Inc.: Compliance with the Reimbursable Cost Manual.

Recommendation 1: Review the recommended disallowances resulting from our audit and make the appropriate adjustments to Bilinguals' CFRs. Adjust Bilinguals' reimbursement rates, as appropriate.

We agree with this recommendation. The Department will review and make adjustments to the reimbursable costs as noted in the report and recover any overpayments as appropriate by recalculating tuition rates. We will also review and consider additional information Bilinguals may submit in response to this report.

Recommendation 2: Work with Bilinguals officials to help them comply with Manual provisions.

We agree with this recommendation. The Department will continue to provide technical assistance whenever requested and will strongly recommend Bilinguals, Inc. officials take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual (RCM). In addition, beginning with the submission of the Consolidated Fiscal Reports (CFR's) for the 2012-13 school year, the Department is requiring that individuals signing the CFR certification statements, namely Executive Directors and Certified Public Accountants, either attend an Interagency CFR training at one of the six locations it is offered across the State or complete the Rate Setting Unit's (RSU) on-line CFR training course. This requirement will be mandatory for 2013-14 CFR submissions. RSU will be tracking and verifying that individuals have completed the training.

In addition to the recommendations by the Office of the State Comptroller, the Department may pursue additional actions based upon the nature of the findings contained within the audit report. Specifically, the Department will closely examine the circumstances that led to the fiscal and management practices findings described in the audit report, which would include an assessment of the programmatic oversight and fiscal management employed at Bilinguals, Inc., in order to determine what, if any, actions are necessary regarding Bilinguals, Inc.'s approval status as a 4410 provider.

If you have any questions regarding this response, please contact Ann Marsh, Director of the Rate-Setting Unit at (518) 473-2020.

Sincerely,

S Cates-Williams

Sharon Cates-Williams

c: Commissioner King
James DeLorenzo
Ann Marsh
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Agency Comments - Bilinguals Inc.

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VIA PDF

May 7, 2014

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RESPONSE OF BILINGUALS INC. TO THE COMPTROLLER'S REPORT

This firm is counsel to Bilinguals Inc. We hereby submit this response to the draft report provided by the New York State Office of the State Comptroller in March 2014 under the title: Compliance with the Reimbursable Cost Manual.[1]

Introduction

Bilinguals Inc. ("Bilinguals") has been in business serving children with special needs in New York State since 1995. To date, Bilinguals has served many thousands of children. The company has never previously been the subject of an audit by the New York State Comptroller ("the Comptroller"). Bilinguals fully cooperated in every way with a nearly two year long audit by the Comptroller. In his report, the Comptroller has cited purportedly excess reimbursements received by Bilinguals and subject to repayment; however, at least $587,389 of those payments were duly authorized by the Cost Reimbursement Manual ("the Manual"), properly listed for reimbursement on the Certified Financial Report ("CFR") and are not subject to any form of repayment.

* Comment 1

The Comptroller's office began an audit of the two Bilinguals programs, 9160 (SEIT) and 9135 (SCIS), in July 2012. The audit team of four was on site full time for six months performing their fieldwork, which included conducting interviews, obtaining supporting documents and files and asking questions related to the documents. Bilinguals assigned significant resources dedicated to responding to all of the audit team's requests during their six months on site, in addition to numerous requests during nearly 16 months of off-site work.

Revenues from the SCIS and SEIT programs represent only approximately eight percent of all programs operated by Bilinguals. Ninety-two percent of Bilinguals revenues come from other programs. A large percentage of the children that the company serves are bilingual, with their primary language being Spanish. There is a shortage of domestic bilingual professionals, and Bilinguals prides itself on being one of the few agencies able to meet the needs of a culturally diverse population with qualified providers sourced both within the United States and, when necessary, from a number of foreign countries.

[1] As of the date of this letter, the Comptroller's audit team is still requesting and Bilinguals is still producing documents and other information. For some reason, the Comptroller has denied Bilinguals' request to extend the time for its response until the Comptroler confirms the final version of his report. Thus, this letter responds to the most recent draft report provided by the Comptroller.

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* See State Comptroller's Comments, Page 23.

Cooley LLP

May 7, 2014
Page Two

It is natural and to be expected that a company like Bilinguals, operating in a highly regulated industry, submitting tens of thousands of payment requisitions each year, and serving a very needy population, would have occasional and incidental non-compliances. Such was the case with the Comptroller's audit and Bilinguals is pointedly not contesting certain aspects of the Comptroller's findings. The responses contained in this document detail only the areas in which we disagree with the conclusions of the auditors.

In addition, there were large sums spent by Bilinguals during the audit period on qualified expenses that were not reimbursed by the New York State Department of Education (SED). Over the course of the three audit years, Bilinguals spent a total of $853,976 on the SEIT and SCIS programs that was properly coded to the CFR, but exceeded the cost screen. In other words, Bilinguals operated both programs at a loss, spending far more on legitimate expenses during the audit years than SED reimbursed.

* Comment 1

The cost screen is the cap on reimbursement amounts based on expense limits set by SED, even for qualified expenses. Bilinguals incurred qualifying expenses totaling at least $853,976 that were not reimbursed by SED. Any amounts ultimately determined by the Comptroller (and then by SED) to have been reimbursed to Bilinguals outside of the Manual's confines are more than offset by the total amount not reimbursed. This is further explained in "CFR Cost Screen" section below.

* Comment 11

Response to Findings

Below is Bilinguals' detailed response to those findings by the Comptroller which are erroneous.

I. Personal Service Costs

Allocation of Personal Service Expenses

The auditors made a mistake when they concluded that Bilinguals should not have received reimbursement for certain so-called "personal service" expenses of $51,869 supposedly misallocated to Bilinguals (rather than to affiliate companies). Bilinguals provides certain back office functions for a number of small affiliated companies ("the Affiliates"). The Affiliates were allocated a portion of the expenses incurred by vital supporting departments such as Accounting, Human Resources and IT. Bilinguals accounts for services provided to the Affiliates by allocating administrative expenses across the various companies roughly in accordance with the relative size (and needs) of any particular Affiliate and completely consistent with the Manual's requirements. This information was freely provided to the audit team, but they apparently disregarded the data and, instead, chose a flawed sampling and incorrect methodology to arrive at the cited disallowance. Bilinguals' allocation was correct within the mandate of the Manual and no further disallowance is warranted.

* Comment 2

The Manual requires that cost allocations must be made in proportion to each program's relative size and Bilinguals made the necessary allocation. For example, in FY 2008/2009, the Executive Director who provides support to Bilinguals, as well as the Affiliates, had her compensation allocated 93.5% to Bilinguals and 6.5% across all of the Affiliates. For some reason, the auditors chose to pick a sample of 21 random employees whom they felt should have their costs allocated among the Affiliates without regard for the employees' function. The auditors' methodology was without any basis and just plain wrong. For example, the auditors chose to cite certain employees who had job codes in the 500 range, which are program specific positions. Only job codes in the 600 range can function as administrative positions supporting Bilinguals, as well as the Affiliates, and therefore subject to allocation.

Cooley LLP

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Bilinguals provided the audit team with information (CFR spreadsheets), demonstrating that the CFRs for FY 2008/2009 and FY 2009/2010 included an adjustment (reduction) to salary expenses across administrative employees, but the audit team apparently ignored the information. Bilinguals' allocation reflected operative support services such as payroll and human resources. For example, in FY 2008/2009, Bilinguals adjusted $104,753 in expenses for services to Affiliates in the 2008/2009 CFR. In FY 2009/2010, a reduction of $167,191 was taken from the total Bilinguals expenses on the CFR to account for services provided to Affiliates. There is no legitimate rationale for additional disallowances on account of administrative costs during the audit years.

* Comment 2

Non-program employees

The draft audit recommends a disallowance of $76,119 to account for administrative services provided by eleven employees of Bilinguals' Affiliates to the two audited programs. The recommended disallowance is erroneous because the employees at issue provided properly reimbursable services to the subject programs. And, the reasons for the disallowance run counter to the audit methodology used by the Comptroller's team in the audit report. Several employees in this category had 600-level job codes. The 600-level job codes are designated for employees who are administrative and support overall operations, including Bilinguals.

* Comment 3

The audit team was provided with information and/or interviewed employees in question. From the interviews and/or employees' files, the auditors were able to gain an understanding of the functions performed for Bilinguals and the programs. Each employee in this category had their personnel file reviewed by the audit team which documented the scope of their responsibilities, as well as their administrative functions benefiting Bilinguals.

The listed employees were paid by an Affiliate, GHS; however, all eleven employees "did work for" Bilinguals; meaning that they provided services to Bilinguals and the programs. Bilinguals properly sought reimbursement for an allocated portion of the employees' salaries through its CFR submission strictly in accordance with the procedures outlined in the Manual. The Manual does not bar the recovery of actual costs incurred in support of qualified programs by employees employed by affiliate companies. It is fundamentally inequitable for the audit team to assess costs from the CFR to affiliate operations while at the same time disclaiming costs incurred by Bilinguals' Affiliates in support of the audited programs.

Employee Bonuses

There were a number of significant errors committed by the audit team in its assessment and disallowance of $153,793 in employee "bonuses". First, Bilinguals' receipt of the preliminary report marked the first time that Bilinguals received notice of the particulars of the "bonus" disallowances. Second, personnel files reviewed by the audit team contained performance appraisals which justified the "bonus" awarded based on merit – i.e. quality performance. Bilinguals is permitted under the Manual to set its own standard for merit bonuses and to award them accordingly.

* Comment 4

Bilinguals provided employee files which contained performance appraisals for employees requested by the audit team on several occasions. The three employees who received the "disallowed" performance bonuses during the audit period each worked at the equivalent of 120% for the periods when bonuses were paid. SED defines a full day SCIS classroom program as a five hour class. Bilinguals operated two 3 hour classrooms per day and the listed providers worked at the full time equivalent of 1.2 each, among additional duties. Each of the three employees' personnel files contains positive

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performance reviews complimenting the employees' productive performances. All of the requirements of the Manual were met and support the awarding of (and reimbursement for) performance bonuses to the subject employees. The disallowances cited by the auditors are erroneous.

Executive Compensation

The Comptroller's team used the wrong methodology in analyzing Bilinguals' executive compensation and in recommending disallowances of $27,329 for purported excessive payments to a Bilinguals Executive. The proper test for determining reimbursable executive pay includes the following factors: job duties (as distinct from strictly job title), and median salary "screens" for the job duties within specified job codes and in specified regions. The "screens" represent median salary figures implemented by SED above which SED will not provide reimbursement. The Comptroller disregarded the reductions for SED's screen Bilinguals had already incorporated into the CFR submission, analyzed compensation under the wrong job code and used the wrong region as its benchmark.

* Comment 5

As set forth below, Executive salaries on Bilinguals' CFR submission are subject to a median salary screen by SED in each audit year. Each year, as part of the CFR approval process, SED reviews expenses charged to the program and makes adjustments. Bilingual's program rates were already reduced for the median salary adjustment by SED prior to the auditors' review. In each of the three years, this reduction was reflected in the rates Bilinguals received for the positions as submitted.

Reduction per SED Calculation:

Program	9135	9160	Total
Fiscal 08/09	$7,762	$2,180	$9,942
Fiscal 09/10	$12,991	$3,735	$16,727
Fiscal 10/11	$6,939	$2,164	$9,103
Totals	$27,692	$8,079	$35,772

As reflected in the table, the adjustments during the audit years to account for the median cost screen amounted to $35,772. The auditors neglected to take this figure into consideration when formulating their disallowed amount.

For the first two audit years, the executive subject to the disallowance was classified and functioning under job code 604. SED requires that only job codes 601, 602, and 603 are to be subject to the median salary adjustment. So, the auditors erred in disallowing any portion of his compensation for the first two audit years.

In addition, median salaries are to be compared within the particular region in which an agency operates. Bilinguals operates in Suffolk County (Region 2) and it is therefore permissible for Bilinguals to use Region 2 rates for a median basis. Region 2 has higher median salaries than Region 1. The audit team arbitrarily chose to use Region 1 instead of Region 2 in order to come up with a disallowable amount. The disallowances are without basis and should be reversed.

* Comment 6

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II. International Recruitment

Bilinguals serves a predominantly bilingual or non-English speaking population. Our service professionals must have strong foreign language skills. We actively recruit domestically qualified therapists but there is a shortage compared with the demand for Bilinguals' services. So, consistent with best practice within the industry, and without any prohibition whatsoever in the Manual, Bilinguals successfully recruits candidates outside of the United States. Those efforts, as well as Bilinguals' extensive and expensive domestic recruitment activities are well documented and were available to the auditors. Our expenses in connection with foreign recruitment have been properly submitted for reimbursement in accordance with the Manual, have consistently been reimbursed by SED over the life of the programs and should not be subject to any disallowance. The auditor's conclusion to the contrary is just plain wrong and not based on any regulation or law.

* Comment 7

There was no reference in the Manual during the audited years which would have disallowed the use of international recruiting practices in order to fulfill the needs of the programs. Nor, is there any requirement in the Manuals for the audited years to document domestic recruitment efforts. In fact, the current Manual for FY 2013/2014 (the first Manual ever to include such standards) includes specific mention of reimbursement for international recruiting and articulates the same standards that Bilinguals used during the audited years. For example, the current Manual requires documentation of domestic recruiting efforts, that international recruits have required credentials and that staff remain employed for at least one year.

A large portion of the children we service are bilingual-Spanish. For the two audited programs (SEIT and SCIS), the regulations require these services must be provided by qualified therapists, who have obtained an additional Bilingual Extension Certificate. Unfortunately, qualified domestic therapists are in extremely short supply and nearly impossible to identify in numbers sufficient for the needs of the programs. In order to meet the needs of the bilingual population with providers who meet the requirements of SED, international recruitment has become a necessity. Bilinguals does not conduct international recruiting because it is easier or more profitable than domestic recruiting. Quite the opposite. It presents as an additional expense for the agency and creates logistical and staffing challenges, but without international recruitment, Bilinguals could not serve its client population appropriately.

* Comment 8

Bilinguals has always strived to find domestic candidates to meet the needs of our programs. We explained to the audit team how much we invest in recruiting efforts locally through trade shows, advertisements, and a team of full-time domestic recruiters. Even with this effort Bilinguals is still unable to hire enough bilingual qualified personnel to meet the demand. SED has never required us to maintain or produce evidence of our domestic recruitment efforts. However, Bilinguals has been required to provide evidence of our domestic recruitment activities to the US Department of Labor, Employment and Training Administration ("US DOL") for Green Card filings. The US DOL requires companies to prove that they made every effort available to hire a fully qualified individual in the United States for the profession in question. Bilinguals provided the audit team with reams of evidence that has been accepted by the U.S. DOL for the audit period in question. That evidence includes Notices to All Employees, job postings in the New York State Job Bank, Sunday Newspaper Ads, information regarding our Employee Referral Program, job postings on our Company website, job postings on internet job boards (Craigslist, Monster, Absolutely Healthcare, etc.), booths at job fairs, and job postings with university placement offices. On occasion the U.S. DOL randomly selects some of our Green Card filings for audits. In those

* Comment 7

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particular cases, Bilinguals prepares a recruitment report that includes a chart of applicants and résumés received for the position in question. Examples of those audit responses were also provided to the audit team and were sufficient under the standards of United States Department of Labor.

The need for qualified foreign professionals to provide services to children in the New York City area is not unique to Bilinguals. Even the City Department of Education has conducted international recruitment for teaching professionals. In fact, from the years 2001-2012 the NYC Department of Education found the need to file 336 labor condition applications (LCAs) for H1B Visas and 1304 labor certifications for green cards. United States. NYC Department of Education. Department of Education. *New York City Department of Education Report - H1B Visa and Green Card Profile| MyVisaJobs.com.* MyVisaJobs.com, n.d. Web. 18 Feb. 2013. <http://www.myvisajobs.com/Visa-Sponsor/New-York-City/383764.htm>.

The international recruitment process is lengthy and the entire process can take several years. The recruitment expenses of the current year are incurred in order to maintain the supply of bilingual therapists for future years. We have provided proof to the auditors that in each of the audit years the programs have utilized the recruits in order to provide the services needed by the children in the programs. During the scope of the audit, there were 23 international recruits working in the programs as direct service providers and six providing administrative support, not eight in total as suggested in the audit report.

* Comment 9

There are several other obvious errors in the Comptroller's report. For example, $17,629 was disallowed from the expenses incurred for filing visa extensions for Bilinguals professionals already in the United States, already working for Bilinguals and already providing services to children. Thus, visa extension costs do not fall into the category of international recruiting. The total cost of visa extensions for providers working directly in the SEIT and SCIS programs was actually $16,270. Thus, even under the auditors' flawed reasoning, the only disallowed expense from visa extensions should be $1,359. As another example of the auditors' errors, several of the employees who were disallowed under the category of international recruitment actually performed functions during the audit years which benefitted other programs. The auditors never bothered to interview these employees and, if they had, the auditors would have discovered the actual services for which these employees were the subject of reimbursement requests.

* Comment 10

All of the claimed expenses were documented and justified. It is improper for the auditors to create new rules (against international recruitment) where none previously existed. The entire amount of the disallowances ($278,729) for international recruitment are inappropriate and should be withdrawn.

III. Amount over the CFR Cost Screen

Both of the programs at issue are funded using a reimbursement (rather than a fee for service) model. Bilinguals' submissions for actual expenses incurred nevertheless are put through SED's cost screen before being approved for payment. In each year of these two programs' operations, the expenses taken to run the programs exceeded the amount which was reimbursed to the agency. This was not taken into account in the disallowances claimed in the Comptroller's report. The exact amounts are as follows, using a methodology confirmed with SED:

* Comment 11

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Non-Reimbursed Expenses By Program as Per the CFR:

amount over cost screen	2008 - 2009	2009 - 2010	2010-2011	total
SEIT	$ 202,393.00	$ 224,801.00	$ 181,118.00	$ 608,312.00
SCIS	$ 66,073.00	$ 76,623.00	$ 102,968.00	$ 245,664.00
Total	$ 268,466.00	$ 301,424.00	$ 284,086.00	$853,976.00

This total sum of "screened" expenses, $853,976, should be subtracted from any final disallowance determination. A failure to credit the program with expenditures that were not reimbursed would result in a double charge penalty for Bilinguals. In effect, Bilinguals would be asked to pay back money which was not even paid to Bilinguals in the first place. So, even under the Comptroller's reasoning, without regard for the errors cited above, Bilinguals owes no reimbursement to SED by way of any disallowances.

*
Comment
11

Bilinguals thanks you in advance for your careful consideration of the comments in this response to your draft report.

Sincerely,

Michael N. Sheetz

cc: Bilinguals Inc.

State Comptroller's Comments

1. Our report disallowances focus solely on expenses claimed for reimbursement by Bilinguals on its CFRs. The positions we take on the various disallowances are discussed with, and agreed to by, SED officials before they are included in our report.
2. At the time of our audit fieldwork, Bilinguals officials provided no evidence that the personal service costs in question were allocated properly to the affiliated companies. Bilinguals did not have time distribution or other records to support the allocations. Also, as a result of information Bilinguals provided to us after we issued our draft report, we reduced the amount of the recommended disallowance for these allocated costs by $7,592 (from $51,869 to $44,277).
3. Bilinguals officials correctly detail some of the audit procedures performed by our staff during the audit. It is precisely those procedures that enabled us to reach and support our audit conclusions.
4. Page 6 of our report adequately explains our findings on bonuses. It appears that Bilinguals would like to categorize the extra pay made to the noted employees as bonuses since they are limited to a 1.0 reimbursement for each full-time employee and would like to reimburse them for the extra hours they supposedly worked.
5. To clarify, when we assess the propriety of executive compensation, we consider the job title and salary charges to the CFR for the selected titles, and compare those charges to the limits established by SED for the relevant geographic region.
6. Bilinguals is headquartered in New York City (Region 1) and is the location in which Bilinguals' ED and AED worked during our audit scope period.
7. We've revised our report wording (page 8) to eliminate our paragraph on Bilinguals' domestic recruitment efforts based on additional information provided to us by Bilinguals after the issuance of our draft report, and reduced our recommended disallowance, by $73,033, to allow for Bilinguals' personal service related international recruitment expenses.
8. We agree. International recruiting is obviously more time consuming and costly than domestic recruiting efforts. That is the reason SED expects providers to justify their need to do so and only pay for necessary expenses.
9. During the audit scope period, only eight individuals were hired to work in the audited programs as a result of Bilinguals' international recruitment efforts.
10. Once again, we disallowed any costs pertaining to individuals who did not work for the audited programs during the audit scope period.
11. As a matter of course, SED officials reconcile our recommended disallowances to those disallowances they may have previously identified and taken action on.