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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

March 27, 2006

Mr. William C. Lucia
President
Health Management Systems
401 Park Avenue South
New York, NY 10016

Dear Mr. Lucia:

This is in response to your complaint letter of January 16, 2006 opposing the extension of contract No. C017959 between the Department of Health (DOH) and Public Consulting Group (PCG) for Third Party Identification and Recovery Services. Your complaint raises issues dating back to an amendment approved in 2004 adding Prepayment Insurance Identification and Verification ("the PIIV amendment") to contract No. C017959. For the reasons set forth below, we find that approval of the PIIV amendment was appropriate and that we have no reasonable basis for withholding our approval of the extension of Contract No. C017959 to January 6, 2007. However, we are returning unapproved a Contract Reporter exemption request, concurrently submitted by DOH that proposed to extend Contract No. C017959 beyond January 6, 2007, and are advising DOH that it must undertake a new competitive procurement for a successor contract.

The HMS Complaint

The details of your complaint were communicated to this Office in a letter dated October 18, 2005. However, the issues raised relate back to the amendment that added PIIV to contract No. C017959 (see the attachment for a "Timeline of Events"). In your October 18th letter, Health Management Systems ("HMS") alleges that:

- PCG, in attempting to demonstrate the reasonableness of the proposed $40 per record fee, misrepresented the fees it charged to other states for the same services.
- PCG's fees are unreasonable as it charges nearly double the fees it charges other states comparable in population.
- The "market price" was significantly lower than the $40 fee charged by PCG.

<u>PCG's Alleged Misrepresentation</u>

In the summer of 2003, PCG represented to DOH that for PIIV it charged $50 per record to both West Virginia and Idaho, and charged Texas $39 per record. HMS contends that PCG did not charge such states $50 per record, but rather charged the following:

a) West Virginia 1.1 percent contingency fee
b) Idaho $39 per record
c) Texas $16 per record.

We reviewed your allegations with PCG which offered the explanations and clarifications outlined below:

- Preliminarily, PCG explained that the West Virginia contingency fee of 1.1 percent referred to by HMS was bid for the new West Virginia contract starting in July 2004 and further explained that this percentage converts into per record fees of $39.86 for major medical polices and $20.26 for minor polices. With respect to the contract in effect with West Virginia, in the summer of 2003 PCG indicated that such contract provided for a payment of $45 for each commercial major medical policy verified and an additional $20 for each minor policy verified.[1] Similarly, PCG stated that the Idaho contract provided for a payment of $39 for each major medical policy verified and another $39 for each minor policy verified.

  PCG maintained that in the performance of the West Virginia and Idaho contracts there is a "strong likelihood" that each case will result in a major policy and at least one minor policy being identified and verified thereby resulting in payments to PCG that are much higher than the fees submitted for comparison purposes. Rather than represent the West Virginia fee as $65 per record and the Idaho fee as $78 per record, PCG stated that it "rolled up the cost in order to present a lower price for New York."

- With respect to the Texas contract, PCG acknowledged that it was a subcontractor to that State's Medicaid claims processing contractor, responsible for identifying and verifying Third Party Liability (TPL) health insurance, and that it charged the contractor a fee of $16 per record.[2] However, PCG noted that the only contract it held directly with the State of Texas was with that State's Office of the Attorney General (OAG), which contract, DOH has indicated, included the operational component for PIIV. Under this contract, PCG charged the Texas OAG $39 per record during 2003. PCG further maintained that it was able to charge a lower price as the Medicaid claims processing subcontractor by leveraging the data gathered under its OAG contract.

Misrepresentation is the making of a false or misleading assertion with the intent to deceive. Based upon explanations and clarifications received in response to the issues raised in your October 18th letter, we would agree that the information provided by PCG in the summer of 2003 was incomplete. However, based upon the above explanation of fees it does not appear to be a result of intent by PCG to deceive, and, indeed, as outlined below based upon our current understanding, we

[1] PCG did not explain, but the contract makes clear, that the fees are earned for verifying records in excess of 300 records per month.
[2] PCG continues to be a subcontractor to the current Texas Medicaid claims processing contractor.

are satisfied that the $40 fee under the 2003 PIIV Amendment was reasonable. Finally, disclosure by PCG in 2003 that it was charging $50 per record in Alaska and Kansas[3], and other states smaller than New York State fees ranging from $25 to $40 per case, serves to enhance the conclusion that PCG did not intend to deceive DOH or OSC.

Reasonableness of the Fee

HMS contends that the fee charged by PCG under the 2003 PIIV amendment were not reasonable. Based upon the record before us, we find no compelling evidence to support this contention.

For example, the $39 per record fee PCG charged to Idaho and Texas, and the $45 per record fee PCG charged to West Virginia, was reasonably approximate to the $40 per record fee quoted to New York.[4] The fact that PCG might have been charging $40 per record or less in Arizona, Indiana, Louisiana, New Hampshire, Ohio and South Dakota is not compelling absent further information regarding the scope, terms and conditions of the contracts in those states.

The Market Price

HMS attempts to show the "market price" was significantly less than $40 by listing the prices that HMS itself charges its client states, as follows:

a) Arkansas $19.68 per record
b) Colorado $24 per record
c) Michigan $14 per record
d) North Carolina $19 per record
e) Ohio $19 per record.

Comparing contracts with potentially differing scopes of services, varying populations and other factors such as bidding strategies cannot conclusively demonstrate a "market price," particularly the "market price" for the negotiated price for a single service. There are just too many variables.[5] Consequently, we find no reasonable basis to accept the HMS assertion as to "market price" for PIIV.

Other Factors

[3] HMS argues that the $50 per record fees PCG charges Alaska and Kansas are misleading due to the smaller Medicaid populations in these two states.
[4] Indeed, since apparently, with respect to West Virginia and Idaho, PCG is entitled to a double fee in most cases, arguably the rate charged to New York is significantly lower than the rates realized by PCG in those two states.
[5] Notwithstanding the information provided in its complaint, we note that HMS proposed the highest contingency fee (6%) in the DOH competitive procurement for Third Party Identification and Recovery services which resulted in contract #C017959. PCG's contingency fee, in contrast, was the second lowest (5.45%). Thus, we have no reasonable basis to conclude that HMS would have proposed a price lower than $40 per record had PIIV been a part of the scope of services in the competitive procurement. In any event, to the extent HMS could provide these services a fee less than PCG, HMS would have an comparative advantage in the competitive procurement for a new contract which we are requiring.

As with all contract approvals, the OSC decision regarding approval of the PIIV amendment and the contemplated extension of contract No. C017959 until January 6, 2007 is not based solely on the record fee but rather the overall reasonableness of the transaction and the best interests of the State. In particular, we must consider the administrative complications and potential loss of program savings that could arise from having one contractor for Third Party Identification and Recovery Services and a second contractor for PIIV services. In addition, we must consider the fact that PCG offered to credit the record fee against any subsequent third party recoveries. In light of the above, we determine that approval of the PIIV amendment was reasonable and that its approval was in the best interest of the State. Finally, because our approval of the PIIV amendment was reasonable, and under all of the existing circumstances, approval of the one-year extension of contract No. C017959 provided for in that agreement is also reasonable and in the best interest of the State.

<u>Contract Reporter Exemption Request</u>

As noted above, in March 2006, DOH re-submitted a Contract Reporter exemption request proposing to extend contract No. C017959 until January 6, 2008 with the possibility of two one-year renewals. As we did in December 2005 with respect to the original submission, OSC is returning unapproved the revised exemption request because DOH has not sufficiently justified a single source extension beyond January 6, 2007. As a result, DOH will have to undertake a new competitive procurement for such services.

<u>Conclusion</u>

In considering the issues raised by your complaint as well as the information provided in response thereto, we find that PCG did not attempt to deceive the State, and we find no compelling evidence to support the contention that the fees charged by PCG are unreasonable. We conclude that the variables involved with such contracts makes determining a true "market price" impossible absent a competitive procurement where all proposals are based on the same specifications. Further we find that approval of the PIIV amendment was, and the extension of such contract to January 6, 2007 is in the best interest of the State as established above. However, we do not find compelling justification for extension of contract No. C017959 beyond January 6, 2007 and, therefore, we are returning unapproved to DOH its Contract Reporter exemption request for a further extension.

Sincerely,

John G. Moriarty
Director, Bureau of Contracts

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Att.