

Mission:

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



Ron DeSantis
Governor

Scott A. Rivkees, MD
State Surgeon General

Vision: To be the **Healthiest State** in the Nation

April 5, 2021

Scott A. Rivkees, MD
State Surgeon General
4052 Bald Cypress Way
Tallahassee, Florida 32399

Dear Dr. Rivkees:

Enclosed is our internal audit report # A-2021-001, *The Department's Subcontracts and Related Processes*. The report provides an independent evaluation of the Department's subcontracts and related processes.

The audit was conducted by Ashlea K. Mincy, CIGA, Assistant Director of Auditing, and supervised by Mark H. Boehmer, CPA, Director of Auditing.

Management agreed with the findings identified in the report. We will provide you a status update in six months detailing the progress management has made toward addressing the proposed corrective actions included in Appendix A of the report.

If you wish to discuss the report, please let me know.

Sincerely,

Michael J. Bennett, CIA, CGAP, CIG
Inspector General

MJB/akm
Enclosure

cc: Melinda M. Miguel, Chief Inspector General, Executive Office of the Governor
Lisa Norman, CPA, Office of the Auditor General
Cassandra G. Pasley, BSN, JD, Acting Chief of Staff
Louise St. Laurent, General Counsel
Michele Tallent, Deputy Secretary for Operations
Antonio Dawkins, Assistant Deputy Secretary for Operations
Ed McEachron, Director, Division of Administration
Mark H. Boehmer, CPA, Director of Auditing



THE DEPARTMENT'S SUBCONTRACTS AND RELATED PROCESSES

Report # A-2021-001 • April 5, 2021

Purpose of this project:

We wanted to examine and evaluate:

- The Department of Health's (Department, DOH) recording and reporting requirements of subcontracts.
- The level of review of contract managers' contract files related to subcontracts.
- Whether the Department's contract managers perform required procedures related to subcontracts.
- Whether contracted providers (providers) comply with reporting of, receive approval for use of, verify selected approval processes of subcontractors, and include required contract language with subcontractors, as required in the Department's *Standard Contract*.
- Whether conflict of interest relationships exist with subcontractors.

What we examined:

The Department's current subcontracting processes, and selected contracts and subcontracts that were active July 1, 2019 through June 30, 2020.

Summary of results:

We did not identify any conflict of interest relationships with subcontractors. The Department continues to update its processes over contract management. We identified the following issues management should address:

- Contract managers did not effectively identify subcontractors.
- Contract managers did not accurately and timely complete the *Subcontracting Request Form*.
- Agreements between providers and their subcontractors did not include the U.S. Department of Homeland Security's (DHS) E-Verify system (E-Verify) language as required by the Department's *Standard Contract*.
- Contract language was not timely updated to include new laws, policy and procedures.

Additional details follow below. Management's response to the issues noted in this report may be found in **Appendix A**.

BACKGROUND

Section 287.057(15), Florida Statutes, requires the Department to have a contract administrator to be responsible for maintaining a contract file and financial information on all contractual services contracts and to serve as a liaison with the contract managers and the Department. While the Office of Contracts serves in this capacity, it has no direct oversight authority over the contract managers, but is available to assist contract managers.

The Office of Contracts is organized in the Bureau of General Services under the Division of Administration.

The Office of Contracts has primary responsibility to review and process contracts and associated documents; develop and provide training relating to contracts; formulate contract-related policies; develop and maintain the *Standard Contract*; conduct monitoring activities; and provide technical assistance and expertise.

The division program offices and local county health departments (CHD) have the responsibility for the policy determinations and management of all Department contracts.

Florida's Chief Financial Officer, in accordance with the *Transparency Florida Act*¹, established and maintains the *Florida Accountability Contract Tracking System (FACTS)*, a secure contract tracking system available for public viewing. The *Transparency Florida Act* requires each state entity to post contract information in FACTS within 30 calendar days after executing a contract. Based on a report from FACTS provided by the Office of Contracts, the Department maintained approximately 2,100 active contracts between July 1, 2019 until June 30, 2020, with an original contract value totaling more than \$10 billion². Two hundred and sixty-one Department employees managed these contracts. These totals are estimates, as the Office of Inspector General (OIG) recently reported³ that all the Department's contracts are not included in FACTS.

A Department employee (contract manager) is assigned to each contract to be accountable to ensure providers perform contract activities and/or provide stated contract deliverables. It is the contract manager's responsibility to use appropriate Office of Contracts forms and documents; prepare contracts; ensure audit requirements are conveyed to the provider; complete an annual monitoring plan; monitor the provider's administrative, fiscal, and programmatic performance relative to the terms of the contract; process, inspect, review, and approve the provider's deliverables and authorize invoices for payment; review and reconcile the provider's contract-related expenditures; review and approve the provider's budget and maintain all documentation supporting the cost analysis; ensure providers complete applicable documents; verify the provider is in good standing with the Department and the Department of Management Services (DMS); correct errors found during the contract review process; maintain contract files; obtain a list of all health and human services contracts the provider has with Florida's health and human services agencies; and ensure the provider has met all contract terms, conditions, and requirements specified in the *Standard Contract*.⁴

DOHP 250-14-19, *Contractual Services (Contractual Services policy)* assigns the contract manager's supervisor responsibility to, among other contract issues, conduct a review of the contract file every six months.

¹ Section 215.985(14), Florida Statutes

² The Department's largest contract is \$7.7 billion

³ Report No. C-1920-001, *The Department's Child Care Food Program, A Consulting Project*

⁴ Section III(3)(B), DOHP 25-14-19, *Contractual Services*.

The Department defines subcontracting as when a provider makes a written agreement with another entity to perform part of the tasks or work covered in a Department contract.⁵

The provider must receive Department approval to utilize a subcontractor, is precluded from subcontracting 100% of the work, and remains responsible for all contract performance. The Department may not approve any subcontractor with an unacceptable history with either the Department or DMS. The contract manager must review the provider's *Subcontracting Request Form*, to determine if the subcontractor should be approved to work on the contract based on the contract's terms and conditions.⁶

DETAILED RESULTS AND RECOMMENDATIONS

Following written procedures for the execution and management of the Department's contracts is vital to ensure the protection of the Department's funds, that the Department derives the maximum return of services for those funds, and helps to ensure contracts are in compliance with applicable federal and state law, and rules and regulations governing contracts for services.

Our audit identified the following opportunities to improve effectiveness and efficiencies in operations, and reduce the risk of fraud, waste, and abuse:

1. Contract managers did not effectively identify subcontractors.

- The Department does not currently maintain a centralized data information system of its subcontractors, or providers that use subcontractors.
- While we could not cite specific authoritative requirements for the Department to develop a process to identify and manage an accounting of all subcontractors and providers that use subcontractors, the Department's inability to identify providers using subcontractors, and that also identifies important information about those subcontractors, increases risk of fraud or abuse through such issues as related party transactions; providers that claim expenditures to nonexistent subcontractors; and problematic or fraudulent subcontractors identified under one provider, with the Department unable to identify the same subcontractor under other providers.
- The Department maintains the same expectations for delivery of services and deliverables from subcontractors. The Department's ability to ensure contract terms and expectations are met, and problems are addressed timely is hindered when subcontractors are not known.

We recommend the Office of Contracts work with contract managers to develop enhanced methods to effectively identify and track subcontractors so as to mitigate issues associated with risks of fraud and abuse.

⁵ Section IV(ZZ), DOHP 25-14-19, *Contractual Services*

⁶ Section V(B), DOHP 25-14-19, *Contractual Services*

2. **Contract managers did not accurately and timely complete the Subcontracting Request Form.**

- The Department's provider agrees when signing the *Standard Contract* that it can neither assign the responsibility of the contract to another party nor subcontract for any of the work contemplated under the contract without the Department's prior written approval.
- The *Subcontracting Request Form* (Form) serves as the Department's written approval to subcontract any work contemplated under the contract. The provider must complete the Form to inform the Department of their intent to enter into an agreement with another provider to conduct a portion of the contracted work. The contract manager is to use the following information from the Form to determine if the use of the subcontractor is appropriate.
 - Legal name and address
 - Determination if the relationship is Recipient/Subrecipient or Contractor/Vendor
 - Brief description of the scope of work
 - Amount of the subcontract
 - Percentage of agreement allocated from the primary agreement
 - If any of the subcontractor's employees are current or former Department employees, their name(s) and role(s)
 - Did subcontractor staff take part in the Department's procurement of the contract
 - Whether the subcontractor has other contracts or subcontracts with the Department
 - Does the subcontract:
 - Include the requirement to comply with the Pro-Child Act of 1994
 - Include the provisions for audits, records, and records retention
 - Include the provision of independent capacity of contractor
 - Identify financial assistance award information
 - Advise the subrecipient of financial assistance of applicable law, rules, and regulations
 - Include the requirement that a financial and compliance audit be submitted in accordance with the Single Audit Act
- The Form is to be completed by the provider for each subcontractor and signed by the contract manager prior to work being performed by the subcontractor.
- In a review of randomly sampled Forms, the Form was either not signed by the provider or it was completed after our request for 19 subcontractors. None of the Forms were signed by the Department's contract manager.
- In another instance the Form was timely completed but included conflicting information. The Form asks whether the subcontractor currently employs current or former Department employees, and if so, to identify their name(s) and the role(s). The provider responded "No", but then listed three individuals' name and role. The individuals were not current or former Department employees, after further research.
- The Form is provided to the contract manager and serves as the Department's only notification of the subcontractor utilized by a provider. The Form should be timely and accurately completed to serve as documentation that the contract manager reviewed the request to subcontract and deemed it appropriate.
- The risk of fraud is increased, and may damage the Department's reputation should subcontractors with a disqualifying history act on behalf of the Department without the Department's knowledge, when the Form is not timely received and reviewed.

We recommend the Office of Contracts issue guidance to contract managers and their supervisors to require the Subcontracting Request Form be reviewed and approved prior to issuing the provider an approval to subcontract.

3. Agreements between providers and their subcontractors did not include the E-Verify language as required by the Standard Contract.

- E-Verify, authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, is a web-based system through which employers electronically confirm the employment eligibility of their employees. In the E-Verify process, employers create cases based on information taken from an employee's Form I-9, *Employment Eligibility Verification*. E-Verify then electronically compares that information to records available to DHS and the Social Security Administration. The employer usually receives a response within a few seconds, either confirming employment eligibility or indicating that the employee needs to take further action to complete the case.
- The Department's provider agrees when signing the *Standard Contract* to use E-Verify to determine employment eligibility of all new employees hired by the provider during the contract term. The provider also agrees to include a requirement in any subcontracts that the subcontractor shall use E-Verify to determine employment eligibility of all new employees hired during the contract term.
- Written agreements between two of the Department's providers and a total of 14 subcontractors did not include language that requires the subcontractor to use E-Verify to determine employment eligibility of all new employees hired by the subcontractor during the contract term.
- While it is the responsibility of the provider to ensure the E-Verify language is included in the agreement with the subcontractor, the contract manager is also responsible to ensure the request to subcontract is in compliance with *Standard Contract* terms.

We recommend the Office of Contracts issue guidance requiring contract managers' supervisor verify the contract manager reviewed the subcontractor agreements to ensure the required language is included prior to providing approval to subcontract.

4. Contract language was not timely updated to include new laws, policy and procedures.

- Multiple versions of the *Standard Contract* were used for contracts active during our audit period of July 1, 2019 through June 30, 2020. These contracts were not timely updated to include language required by the effective date of laws, policies and procedures. Two examples are listed below:
 - Background Screenings
 - Section 110.1127(2)(a), Florida Statutes, requires the Department to designate those positions that, because of special trust, responsibility, or sensitive location, require security background investigations. All persons and employees in such positions must undergo a level 2 background screening, including fingerprinting, as a condition of employment and continued employment.
 - DOHP 60-5-15, *Background Screening*, requires that providers and subcontractors selected for, or assigned to positions of special trust, responsibility, or sensitive location, must undergo a level 2 background screening before being hired.

One contract for services was to evaluate the suspected abuse and neglect of children. However, neither the Department's contract with the provider or the subcontract included language requiring background screenings.

➤ Confidential Information

- Section I, DOHP 50-10.7-16, Information Security and Privacy Policy 7, *Contract Providers and Business Associates*, requires each Department contract resulting in the provider having access to, or producing (as a result of contract services), confidential information to include the following standard contract language:

“Information Confidentiality and Security: The provider shall maintain confidentiality of all data, files, and records, including client records, related to the services provided pursuant to this agreement in accordance with applicable state and federal laws, rules, and regulations and any department program-specific supplemental protocols, which are incorporated herein by reference and the receipt of which is acknowledged by the provider upon execution of this agreement. The provider is required to have written policies and procedures ensuring the protection and confidentiality of Protected Health Information.”

Twenty-six (26) of 40 randomly selected contracts (65%) had a scope of work that would result in the provider having access to or produce confidential information. Although the contracts each included a statement about confidential information, 19 did not have the language required above.

- Contract managers rely that the *Standard Contract* maintained by the Office of Contracts has all the language required by laws, policies and procedures, to ensure their contracts are legally sufficient.
- The Department does not have a unified process to update the *Standard Contract* as new laws, policies and procedures take effect. There should be a process for Office of Contracts to draft changes to *Standard Contract* language and successfully have it reviewed and approved by Office of the General Counsel *before* the change needs to take effect, so that providers and subcontractors can be held to the new requirement(s).

We recommend the Office of Contracts as preparer, and the Office of the General Counsel as approver, together develop a process to ensure the Standard Contract is timely updated to correspond with the implementation of new laws, rules, policies, and procedures requiring specific language in Department contracts.

MANAGEMENT COMMENT

The following comment addresses an issue that should receive further review by management. A written response is not required. However, we feel it is important management address the issue to prevent more serious issues from potentially developing in the future.

Subcontractor employee was not timely processed in E-Verify as required by the Standard Contract and the Contractual Services policy.

- The Department's provider agrees when signing the *Standard Contract* to use E-Verify to determine employment eligibility of all new employees hired during the contract term by the provider. The provider also agrees to include a requirement in any subcontracts that the subcontractor shall use E-Verify to determine employment eligibility of all new employees hired during the contract term.
- The *Contractual Services* policy requires providers and subcontractors use E-Verify to determine employment eligibility of new employees hired during the contract term, performing employment duties within Florida, and all persons (including subcontractors) assigned by the provider to perform work, pursuant to the Department's contract.
- A subcontractor's employee was not timely processed through E-Verify. The contract term began July 1, 2018 and the employee was hired September 8, 2020. Documentation supports the employee was processed in E-Verify January 15, 2021, after our request.
- It was noted during discussions with contract managers, that providers may not be aware of the requirement to ensure subcontractors' employees are processed in E-Verify. While only one instance was identified in our sample, the Department's vast use of providers, and those providers' relationships with subcontractors increases the possibility that additional subcontractor employees are either not processed or not timely processed through E-Verify. Some contract managers have reached out to the providers not included in the sample, as a result of this audit, to determine whether the provider is in compliance with this requirement in the *Standard Contract* and the *Contractual Services* policy.
- Subcontractor employees hired during the contract period and not timely processed in E-Verify is a violation of the *Standard Contract* and the *Contractual Services* policy.

We recommend the Office of Contracts develop a process to ensure all subcontractor employees are processed through E-Verify in accordance with contractual language and Department policies and procedures.

SUPPLEMENTAL INFORMATION

Section 20.055, Florida Statutes, charges the Department's OIG with responsibility to provide a central point for coordination of activities that promote accountability, integrity, and efficiency in government.

Ashlea K. Mincy, CIGA, Assistant Director of Auditing, conducted the audit under the supervision of Mark H. Boehmer, CPA, Director of Auditing.

Our methodology included a review of Florida law; DOHP 250-14-19, *Contractual Services*; DOHP 60-5-15, *Background Screening*; DOHP 50-10.7-26, Information Security and Privacy Policy 7, *Contract Providers and Business Associates*; and an examination of contracts; subcontracts; applicable documentation; and contract manager files. We interviewed key management, contract managers, providers, and subcontractors.

This audit was conducted in conformance with *International Standards for the Professional Practice of Internal Auditing*, issued by the Institute of Internal Auditors, as provided by section 20.055(6)(a), Florida Statutes, and as recommended by Quality Standards for Audits by Offices of Inspector General (*Principles and Standards for Offices of Inspectors General*, Association of Inspectors General).

We want to thank management and staff in the Office of Contracts and the participating contract managers for the information and documentation they provided, and for their cooperation throughout the project.

Copies of all final reports are available on our website at www.FloridaHealth.gov (search: internal audit). If you have questions or comments, please contact us by the following means:

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APPENDIX A: MANAGEMENT RESPONSE

	Recommendation	Management Response
1	<i>We recommend the Office of Contracts work with contract managers to develop enhanced methods to effectively identify and track subcontractors so as to mitigate issues associated with risks of fraud and abuse.</i>	<p>We concur.</p> <p>The Office of Contracts will develop and distribute a standardized subcontractor tracking form for contract managers to use when subcontracts are approved for execution. Subcontracting Guidelines will be developed to assist contract managers and their supervisors with completing the subcontractor tracking form. This form and related guidelines will be emailed to the division contract liaisons and CHD contract administrators.</p> <p><i>Contact:</i> Tamika Fields <i>Anticipated Completion Date:</i> June 1, 2021</p>
2	<i>We recommend the Office of Contracts issue guidance to contract managers and their supervisors to require the Subcontracting Request Form be reviewed and approved prior to issuing the provider an approval to subcontract.</i>	<p>We concur.</p> <p>The Office of Contracts will develop Subcontracting Guidelines to assist contract managers and their supervisors with completing the <i>Subcontracting Request Form</i> to ensure the appropriate review and approval of a subcontract is performed prior to issuing approval for execution. Additionally, the Office of Contracts will incorporate subcontracting as a training topic in the Department's Contract Management Training and recommend the completion of the subject-specific Department Subcontracting Training in TRAIN.</p> <p><i>Contact:</i> Tamika Fields <i>Anticipated Completion Date:</i> July 1, 2021</p>
3	<i>We recommend the Office of Contracts issue guidance requiring contract managers' supervisor verify the contract manager reviewed the subcontractor agreements to ensure the required language is included prior to providing approval to subcontract.</i>	<p>We concur.</p> <p>The Office of Contracts will issue a memorandum highlighting the responsibilities of the contract managers' supervisor to verify the contract manager reviewed the subcontractor agreements to ensure the required language is included prior to providing approval to subcontract.</p> <p><i>Contact:</i> Tamika Fields <i>Anticipated Completion Date:</i> June 1, 2021</p>
4	<i>We recommend the Office of Contracts as preparer, and the Office of the General Counsel as approver, together develop a process to ensure the Standard Contract is timely updated to correspond with the implementation of new laws, rules, policies, and procedures requiring specific language in Department contracts.</i>	<p>We concur.</p> <p>The Office of Contracts will monitor proposed legislation to determine potential impacts to the Department's <i>Standard Contract</i>. When legislation is passed and requires specific language be included in the Department's <i>Standard Contract</i>, the Office of Contracts will timely notify the Office of the General Counsel to request the necessary changes.</p> <p><i>Contact:</i> Tamika Fields <i>Anticipated Completion Date:</i> May 1, 2021</p>