

ATTACHMENT



STATE OF NEW YORK
DEPARTMENT OF LABOR

Administrative Finance Bureau
Building 12
Governor W. Averell Harriman State Office Building Campus
Albany, New York 12240

November 29, 2001

Mr. Robert R. Wallace
Regional Inspector General for Audit
U.S. Department of Labor -OIG
61 Forsyth Street, S.W., Room 6T20
Atlanta, Georgia 30303-3104

Dear Mr. Wallace:

The following is in response to your draft report entitled, "Agreed-Upon Procedures Report on the State of New York Department of Labor (NYSDOL) Year 2000 Grant Expenditures," which discusses the audit of the Year 2000 grants that New York received from the U. S. Department of Labor. As you are aware, NYSDOL has provided a detailed response to the specific facts that were provided as potential audit findings in our letter dated August 8, 2001 (Attachment I) to the Statement of Facts Memorandum dated July 25, 2001 which I understand will be included in the official supporting documentation submitted by this agency, to be considered in your audit determination.

Y2K Cost Summary

First, we would like to note that the KPMG cover memo and the Executive Summary on page one state that, "the purpose of the audit was to determine whether the funds designated for the Year 2000 compliance were spent by the State of New York, Department of Labor for its intended purposes...." We wish to emphasize that the KPMG report does not dispute that Year



Information Risk Management
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2000 compliance funds were utilized for their intended purposes. Furthermore, NYSDOL emphatically states that all funds spent and charged to the Y2K project code were properly charged for work performed on achieving Y2K compliance. We also would like to highlight that the Department fully expended the \$1,000,000.00 that was identified specifically for Y2K purposes in the Federal 1998 Base Grant and the \$13,889,355.00 from the SBRs on Y2K remediation activities. In addition, the Department spent an additional \$1,672,435.00 in remediation costs that had to be funded from our regular annual Unemployment Insurance base grant. The Department also expended \$3,320,038.00 in State funds to accomplish Federal Y2K related activities. The additional resources were utilized to purchase many items that were considered Y2K-critical procurements needed in order to ensure full remediation; however, there was insufficient Federal funding provided to NYS to obtain all of these required items.

Y2K Compliance At Risk

We note that on page four of the audit report, ETA field memorandum 3-99, dated October 13, 1998, is referenced. This memorandum provided guidance from USDOL on the activities relating to Y2K compliance, which the Department fully complied with. We replaced or upgraded our systems, system interfaces and software products which, had they not been replaced, would have adversely impacted our system operations and capabilities. Furthermore, in a previous memo dated February 10, 1998, from Raymond Uhalde, Acting Assistant Secretary of Labor, New York was informed that we had been designated as “at risk of not achieving Year 2000 compliance for mission-critical Unemployment Insurance (UI) and Employment Service (ES) automated systems.” This letter stressed the importance and critical nature of completing the Y2K conversion of New York’s automated systems in a timely manner and the agency took the actions necessary to complete these projects accurately and timely by the required due dates set by USDOL. As a result, the Department was required to use its most experienced Information Technology staff on this critical project in order to meet the required objectives, which was to achieve compliance for all of our UI and ES systems.

Questioned Costs

On page seven of the draft report, KPMG notes “questioned costs”, yet in fact, as detailed by the response letter discussed earlier to the Statement of Facts, all costs incurred by the Department were costs necessary in order to achieve year 2000 compliance. This is evidenced by the fact that the Department met its goals and that none of the Department’s systems failed, all claimants were paid their respective benefits, claimants were appropriately determined eligible or ineligible, and employer contribution rates and interest calculations were computed correctly. In essence, the Department complied with and accomplished the objective as set forth by USDOL for becoming Y2K compliant.

Questioned Costs Documentation

During the audit, KPMG requested documentation from Keane regarding the billing periods reflected on the invoices. In the Draft Report, KPMG failed to note that Keane provided a statement that the billing periods referenced on the invoices did not reflect the actual dates of the work performed, but instead reflected the entire deliverable period that the invoices covered. KPMG also failed to note that Keane’s statement went on further to say that, based upon the

resource hours dedicated to the project, \$293,165.00 was Keane's estimate for the cost of their services performed prior to 10/1/97. KPMG has decided to arbitrarily deem that this documentation was unacceptable and, therefore, on page seven of the draft report a total of \$346,936.00 was considered not chargeable to Y2K funding sources, based solely upon KPMG's review of the billing periods referenced on the invoices.

Staff Costs

KPMG noted on page nine of the draft audit report that ETA placed restrictions on how the Y2K funds were to be spent by issuing field memorandums 50-97 and 47-99. NYSDOL had various staff working specifically on our Y2K-critical systems and therefore, the costs incurred in our Y2K ledgers were direct staff charges resulting from performing direct Y2K activities. For that reason, it was appropriate to charge Y2K for these activities. In addition, the purpose of tracking these expenditures in the Y2K ledgers was to clearly distinguish Y2K costs from our base-funded costs in the event that additional Y2K funding became available. It was clear that these staff were incurring costs associated with Y2K and our intention was to maintain the necessary proper accountability. It would not have been fiscally prudent to record these costs against base grant funds in the first instance, as the activities were directly identifiable as Y2K-related costs.

Further, in October 1997, New York received \$1 million in FY1998 base grant monies and requested clarification from the Regional Office of the United States Department of Labor (USDOL) on the allowed use of these funds. Specifically, we inquired if they could be utilized to fund base staff that were assigned to and working on Y2K projects. We received a letter (Attachment II) dated October 9, 1997 from Marilyn K. Shea, the Regional Administrator (RA) stating in paragraph two that "The base grant funds may be applied to base staff if the base staff is assigned to work on Y2K activities." Based on this direction provided by USDOL, base staff positions in our Data Processing Information Systems organization were directly assigned to the Y2K project. The SBR guidelines were specific to the SBR funds only, not the base grant funds allocated in the FY 1998 base grant. The letter also clarified that SBR funding could be used for base staff that was back-filled and New York did back-fill these positions as explained later in this memo. Nevertheless, KPMG's Draft Report infers, on page nine, that the letter from the RA was disseminated outside of ETA's formal policy-making procedures and therefore was unacceptable. Again, it appears that KPMG arbitrarily made its own conclusion on ETA's formal policy guideline without referencing any supporting documentation from ETA stating that they agree with this position. In fact, if that is the correct interpretation, that ETA did go outside their policy guidelines and since we are mandated to follow ETA's policy guidelines, KPMG should note in the audit that USDOL provided incorrect policy guidance. If this is the case, USDOL should be cited and NYSDOL should not be subject to the \$1 million disallowance for the base fund expenditures. Therefore, our position is clear and remains unchanged that we acted upon official clarification from our RA, and abided by the instructions in their further clarification of this policy.

Staff Costs: Concerns over Auditor Understanding

It is clear from KPMG's Draft Report that they did not have a clear understanding of our Federal accounting reports. On page ten of the report, KPMG states that NYSDOL commingled

financial activities. This statement is totally inaccurate. Our accounting reports very clearly separated costs by project code in order to maintain separate financial activity accountability. Each project's costs were then rolled to an overall fund ledger, our program funding source, which in this instance, was Federal Y2K monies. We also reconciled the fund ledgers to our Federal financial reports, SF269, which were submitted to ETA on a quarterly basis. There was no commingling. We believe that KPMG did not understand that one funding source could support personal services, non-personal services and allocated costs as they note this as an issue in their report. We provided KPMG with all of our GA-17 reports and our SF269 quarterly Federal financial reports which supported these costs. This complied with USDOL instructions for reporting the Y2K expenditures. Note that these reports have been accepted by USDOL, indicating that the proper reporting structure was adhered to as should be expected since we have Federal approval for our nationally recognized financial accounting and reporting system. We spent numerous hours with KPMG staff reconciling these reports and were able to reconcile all reported costs.

Staff Costs: Information Technology Hiring Dilemma

During the audit, NYSDOL responded to KPMG's inquiry on the back filling of base-funded staff assigned to Y2K projects. We advised KPMG that the delay was a result of an extraordinary demand for individuals with computer programming skills in both the public and private sectors. These delays *still* occurred in spite of the fact that the NYS Civil Service System, due to a statewide shortage, relaxed their criteria for filling programmer titles. Previously, these titles required an exam and a two-year traineeship to attain the full salary of the position. The criteria for filling this mission critical position was changed on April 30, 1998 to an evaluation of experience and education and the starting salary was changed to the full title starting salary. While these changes proved helpful, we continued to suffer hiring lags due to the overall shortage of programmers in the labor pool and the ability of private sector employers to compete by paying premiums above our established pay rates. While we regularly experience vacancy rates due to the administrative time it takes to engage new hires, this situation was exacerbated by a tight labor market; a situation that was completely beyond our control. In normal hiring conditions, there is a vacancy factor of about eight weeks in order to properly follow the NYS Civil Service rules and regulations. During this period for the hiring of computer titles, there was at least a six month vacancy factor in filling of positions. We provided KPMG with documentation that detailed the positions shifted to Y2K projects and the back-fills and new hires. When the positions were filled, the new hires/back-fills were assigned the normal program workload which had not been done during the period that the previous individuals were re-assigned to Y2K. KPMG did not accept this documentation as being sufficient to support the lag in back-filling our computer programming items and noted this as a questioned costs on page eleven of its report. It was critical and essential to make a management decision to shift the base staff to the Y2K project in spite of the vacancy factor or the Department would not have reached Y2K compliance.

Furthermore, we feel it is very important to stress that due to the "at risk" designation that had been assigned to New York, we found it imperative to have our experienced, permanent IT staff working on the Y2K remediation and not be put at risk of non-compliance with Y2K while

awaiting the back-filling of items. It is also important to note that while our Y2K remediation was ongoing, we sacrificed many of our base grant activities and that they had to be put on hold. NYSDOL simply did not have sufficient computer programming staff to complete both our regular on-going and Y2K tasks. As a result, we had no other choice, but to have our computer programming base staff perform Y2K remediation on our UI and ES systems.

Staff Costs: Allocated Costs

Also, please note that the allocated costs outlined on pages eight and ten of the audit report are directly related to the disallowance of personal services costs. Consequently, when the \$1M in base grant funds and the back-filled position costs are found to be allowable, a proportionate share of the related Fringe, AS&T and NPS that was disallowed should substantially be reduced.

Conclusion

Finally, as mentioned earlier, we note that New York utilized \$3,320,038 in direct State funds to pay for a portion of the Federal share of costs for Y2K. Since these were totally state funds, the federal regulations for the back-filling of positions did not apply for the usage of these funds. Therefore, we recommend that this funding be used to offset any questioned costs that may occur.

In closing, we maintain that we took the necessary management steps required to achieve a successful Y2K remediation thereby upholding the intent of the Federal Y2K-remediation directives.

Sincerely,

Lewis D Stein
Director of Finance

Attachments

cc: M. Shea