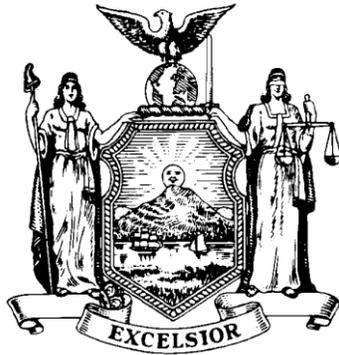


State of New York  
Office of the Inspector General



Investigation of the New York State Division of  
Human Rights Use of Temporary Employees

August 2016

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Inspector General

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## EXECUTIVE SUMMARY

The Inspector General received a complaint alleging that the New York State Division of Human Rights had hired temporary employees from two employment agencies in violation of state contracting rules. Specifically, the complaint alleged that two DHR employees, Edward Watkins, former director of federal programs, and Stephen Rolandi, former director of finance and administration, agreed to pay Kelly Services Inc. and Penda Aiken Inc. at hourly rates significantly greater than those authorized by the state contract for temporary personnel and that the employment agencies billed DHR at those higher rates. The complaint further alleged that after the state centralized contract expired in November 2012, the Division of Human Rights retained the temporary employees from Penda Aiken Inc. and Kelly Services Inc. without a formal contract, for job titles and at billing rates that were not authorized by the state centralized contract maintained by the New York State Office of General Services through which state agencies can purchase goods and services at pre-approved terms and rates.

The Inspector General found that the Division of Human Rights and Penda Aiken Inc. violated state contracting laws and the Office of General Services temporary personnel contract by hiring seven temporary employees for job titles and at billing rates that were not authorized by the state centralized contract or otherwise approved by the Office of General Services. The owner and operator of Penda Aiken Inc., Penda Aiken, testified under oath and admitted that the company's arrangement with the Division of Human Rights was "outside of the OGS [Office of General Services] contract for personnel." Because the temporary employees were hired outside of the state centralized contract, the Inspector General determined that the Division of Human Rights was required to follow the discretionary purchase or competitive procurement processes of State Finance Law section 163, but failed to do so. The investigation also revealed that the Division of Human Rights and Penda Aiken Inc. failed to obtain approval of their contractual arrangement from the Office of the State Comptroller, as required by New York State Finance law section 112 for any state agency contract (other than purchases through a state centralized contract let by the Office of General Services) that exceeds \$50,000. Rolandi was responsible for procurement at the Division of Human Rights, including the hiring of temporary employees, during this time period, but failed to comply with these requirements.

The Inspector General also found that the Division of Human Rights and Kelly Services Inc. violated the Office of General Services temporary personnel contract by hiring a temporary attorney at a billing rate in excess of the rate authorized by the state centralized contract. Kelly Services Inc. did not obtain approval for the increased rate from the commissioner of the Office of General Services, as required by the state centralized contract. Rolandi claimed that the unauthorized rate was approved by Watkins, who oversaw the Federal Programs Unit in which the temporary attorney worked.

Moreover, the Inspector General found that after the Office of General Service temporary personnel contract expired in November 2012, the Division of Human Rights continued to employ temporary personnel from Penda Aiken Inc. and Kelly Services Inc. for these unauthorized titles and/or at unauthorized billing rates without a new state contract. The investigation revealed that Rolandi knew that the division needed a new contract for the temporary employees, but failed to take any steps to conduct a new procurement process and institute a new contract. After the end of the state fiscal year on March 31, 2013, the Office of General Services stopped payment of the invoices from Penda Aiken Inc. and Kelly Services Inc., after determining that the Division of Human Rights did not have a purchase order for temporary employee services. Nonetheless, certain temporary employees from Penda Aiken continued working at the division without a new contract, in some cases through March 2014, to assist in the completion of certain matters, while many of the employment agency invoices remained unpaid.<sup>1</sup>

The Inspector General notes that the current management at the Division of Human Rights took measures to review the financial management of the agency and uncovered the discrepancies that resulted in the referral the Inspector General. The Division of Human Rights has taken several actions to address the problems within the finance department and with temporary employee hiring. Notably, Watkins left the Division of Human Rights in January 2013. Rolandi, who was responsible for the division's failure to comply with state purchasing requirements, left DHR in August 2013. The Division of Human Rights is under new executive management and has restructured its senior staff to ensure more accountability in the management of its finances and oversight of the Federal Programs Unit. Moreover, in January

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<sup>1</sup> Payments to Kelly Services by DHR continued through October, 25, 2013, and to Penda Aiken through November 29, 2013.

2014, the Division of Human Rights obtained permission from the State of New York Department of Civil Service to hire hourly employees in lieu of temporary staff.

Nonetheless, the Inspector General recommends that the Division of Human Rights take steps to ensure that agency procurements are conducted in accordance with internal standards as well as all the State Finance Law and related guidelines. The Division of Human Rights should also ensure that all employees involved in procurement are familiar with agency procedures, including any future revisions. Periodic audits should also be conducted to ensure compliance with procedures.

With regards to outstanding invoices from Kelly Services Inc. and Penda Aiken Inc., the Inspector General recommends that the Office of General Services and the Division of Human Rights calculate a fair and reasonable rate for the temporary employee services provided, which should be based upon the rates set forth in the temporary personnel contract in effect between November 2007 and November 2012.

The Inspector General further recommends that a vendor responsibility investigation pursuant to State Finance Law section 163(9)(f) be performed to determine whether Penda Aiken Inc. and Kelly Services Inc. are responsible contractors/bidders.

## INTRODUCTION AND BACKGROUND

### **New York State Office of General Services and State Procurement**

The New York State Office of General Services (OGS) is the state agency that oversees state contracting and procurement. OGS maintains a system of centralized contracts that allow authorized users, such as state agencies and other entities authorized by state law, to purchase commodities, services, and technologies that fit the authorized user's form, function, and utility requirements. When utilizing an OGS centralized contract, the authorized user may issue a purchase order for commodities or services directly to the vendor without prior approval from the Office of the New York State Comptroller.<sup>2</sup> The contract's terms and prices are predetermined by OGS, but the authorized user is encouraged to negotiate more favorable rates.<sup>3</sup>

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<sup>2</sup> N.Y. State Fin. Law § 112(2)(a) (Consol. 2016).

<sup>3</sup> New York State Office of General Services Procurement Services Group, Temporary Personnel Contract (OGS Temporary Personnel Contract), at 8, 23 (Nov. 2007).

The general specifications applicable to all OGS centralized contracts provide that the contract “may only be modified or amended upon mutual written agreement of the Commissioner [of OGS] and the Contractor.”<sup>4</sup> The contractor may offer more favorable pricing, payment, or other terms and conditions more favorable to the authorized user than those set forth in the contract, but the contractor must submit the revised terms to the authorized user and to the OGS commissioner. Other than changes more favorable to the authorized user, any alterations or modifications to the contract are not valid and binding against the authorized user unless approved by the OGS commissioner.<sup>5</sup>

When services are not available through a preferred source<sup>6</sup> or an OGS centralized contract, State Finance Law authorizes state agencies to procure services independently or in conjunction with other state agencies.<sup>7</sup> A state agency may conduct a discretionary purchase of services and commodities up to \$50,000 without a formal competitive bidding process.<sup>8</sup> Discretionary purchase levels increase to \$200,000 when an agency purchases services or commodities from a New York State small business or certified Minority and/or Women-Owned Business Enterprise (MWBE).<sup>9</sup> In determining the threshold amount for discretionary purchases, the authorized user must “consider the reasonably expected aggregate amount of all purchases of the same commodities or services to be made within the twelve-month period commencing on the date of service.”<sup>10</sup>

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<sup>4</sup> OGS Temporary Personnel Contract, Appendix B, Office of General Services General Specifications, ¶ 40 (July 2006). Appendix B is expressly incorporated into the Temporary Personnel Contract and governs any situations not covered by the contract. OGS Temporary Personnel Contract, at 24.

<sup>5</sup> OGS Temporary Personnel Contract, Appendix B, Office of General Services General Specifications, ¶ 40.

<sup>6</sup> Preferred sources are statutorily created entities that advance certain social and economic goals. N.Y. State Fin. Law § 162 (Consol. 2016).

<sup>7</sup> N.Y. State Fin. Law § 163(4)-(5) (Consol. 2016); 9 N.Y.C.R.R. § 250.4(c) (2016). Service contracts are awarded based on best value to a responsible offeror, or in the case of multiple awards, to one or more responsive and responsible offerors if in the best interests of the state. Selection of the award must be documented in writing in the agency’s procurement record. 9 N.Y.C.R.R. § 250.10(a), (c) (2016).

<sup>8</sup> N.Y. State Fin. Law § 163(6).

<sup>9</sup> *Id.*; Office of General Services, Business Services Center, *New York State Purchasing Requirements for BSC Customer Agencies*, at 3 (Feb. 21, 2016) (BSC Purchasing Requirements) [https://bsc.ogs.ny.gov/sites/default/files/PurchasingRequirements\\_2-26-16.pdf](https://bsc.ogs.ny.gov/sites/default/files/PurchasingRequirements_2-26-16.pdf). Agency discretionary purchases between \$50,000 and \$200,000 from an MWBE vendor must be advertised in the New York State Contract Reporter. Agencies must also obtain written quotes from at least three vendors. BSC Purchasing Requirements, at 3.

<sup>10</sup> NY State Finance Law § 163(6-b); Office of General Services, New York State Procurement Council (Procurement Council), *NYS Procurement Bulletin Discretionary Purchasing Guidelines*, at 2 (May 21, 2014) <http://www.ogs.ny.gov/procurecounc/pdfdoc/DiscretionaryPurchasingGuidelines.pdf>.

Additionally, under State Finance Law section 112, any agency contract in excess of \$50,000 that is not through a preferred source or a purchase pursuant to an OGS centralized contract must be approved by and filed with the Office of the State Comptroller before it is executed and becomes effective.<sup>11</sup> Failure to comply with the statute renders a contract invalid and non-binding against the state. Like state agencies, vendors who contract with the state are responsible for knowing and following the statutes that regulate the state's contracting authority.<sup>12</sup>

### **New York State Division of Human Rights**

The New York State Division of Human Rights (DHR) enforces the Human Rights Law, which protects New York residents from discrimination based upon protected class or status. DHR employees investigate complaints, present discrimination cases to administrative law judges, and develop outreach programs to educate the public about the Human Rights Law.

DHR receives federal funding from the United States Department of Housing and Urban Development (HUD) and the United States Equal Employment Opportunity Commission (EEOC). The Inspector General's investigation focused on HUD funds dispersed through grants and contracts awarded to DHR to combat housing discrimination. This funding allows DHR to process and investigate complaints filed under the Human Rights Law and federal statutes, including Title VII and Title VIII of the Civil Rights Act of 1964. HUD contracts and grants allow DHR to use federal funds to hire temporary employees to investigate and litigate housing-related cases.

From October 2008 through August 2013, Stephan Rolandi was the deputy commissioner for finance and administration at DHR. Rolandi was also the agency's chief administrative officer and chief financial officer, and supervised the Finance Department, Information Technology Department, office services, internal controls, regulatory compliance, and human resources. He reported to First Deputy Commissioner Luis Burgos Jr. who resigned from DHR on June 14, 2013.<sup>13</sup> Rolandi oversaw DHR's procurement processes, including the hiring of

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<sup>11</sup> N.Y. State Fin. Law § 112(2)(a).

<sup>12</sup> *Parsa v. New York*, 64 N.Y.2d 143,147 (1984) ("A party contracting with the State is chargeable with knowledge of the statutes which regulate its contracting powers and is bound by them.").

<sup>13</sup> Burgos resigned after an investigation by the Inspector General found that he used a state vehicle to commute to and from work, in violation of state and DHR vehicle use policies. The investigation found that Burgos improperly

temporary employees for the agency, and was assisted by a principal account clerk. In August 2013, in the wake of a previous investigation by the Inspector General, Rolandi resigned from DHR and became a substitute professor at John Jay College of Criminal Justice.

Edward Watkins began working at DHR in October 1995 and was the deputy commissioner of federal programs at the time of his retirement in January 2013. In this capacity, Watkins negotiated and monitored DHR's federal funding from EEOC and HUD. Watkins directed the hiring of several of the temporary employees at issue in this investigation, using funds received through grants from and contracts with HUD. These temporary employees worked in various capacities in the Federal Programs Unit or on housing discrimination cases brought by DHR's Prosecution Unit. Even though DHR used federal funds to hire the temporary employees at issue in this investigation, all state agencies must procure commodities and services in accordance with state purchasing provisions of the State Finance Law.<sup>14</sup>

#### DHR, PAI, AND KELLY SERVICES VIOLATED NEW YORK STATE CONTRACTING AND PROCUREMENT REQUIREMENTS

##### **DHR and PAI Violated the State Finance Law and the Terms of the OGS Contract**

The Inspector General found that from December 2011 to July 2013, DHR employed seven temporary employees from Penda Aiken Inc. (PAI) on terms outside of the OGS temporary personnel contract. Three of those temporary employees continued to work for DHR until March 2014. Under the OGS temporary personnel contract in effect from November 2007 through November 2012, state agencies were authorized to hire temporary personnel from authorized vendors for pre-approved titles and at pre-approved billing rates. The titles and billing rates for the temporary employees that DHR hired from PAI did not conform to those set forth in the temporary personnel contract. DHR was therefore obligated to follow the discretionary purchase provisions and competitive procurement requirements of the State

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charged the state for the cost of parking his personal car in a garage near DHR offices while he commuted in the state vehicle during the work week. That investigation also found that although Rolandi was responsible for monitoring the use of DHR's state vehicles, he ignored the improper use of state vehicles by Burgos and former DHR Commissioner Galen Kirkland. State of New York Office of the Inspector General, *Investigation into State Vehicle Use Practices at the Division of Human Rights*, (May 2013), <https://ig.ny.gov/sites/default/files/pdfs/Kirkland-DHRPublicReport.pdf>.

<sup>14</sup> See N.Y. State Fin. Law §§ 160-168 (Consol. 2016); Procurement Council, *NYS Procurement Bulletin Discretionary Purchasing Guidelines*, at 1.

Finance Law, and to obtain approval of a new contract by the Office of the State Comptroller.<sup>15</sup> As a state contractor, PAI was similarly obligated to comply with these provisions. Both DHR and PAI failed to adhere to these requirements.

PAI Provided Temporary Employees to DHR outside the OGS Temporary Personnel Contract

In December 2011, DHR hired the first of seven temporary employees from PAI. This employee was one of five temporary employees hired for the job title of “HR assistant” or “project assistant,” which PAI billed to DHR at the hourly rate of \$48.83.<sup>16</sup> The job titles “HR assistant” and “project assistant” were not authorized under the OGS temporary personnel contract, and there was no corresponding billing rate. According to the principal account clerk who coordinated the initial hiring, she acted at the direction of Watkins. The Inspector General reviewed correspondence between DHR and PAI, and discovered that DHR copied the \$48.83 hourly billing rate from an invoice for a temporary attorney that DHR hired from Kelly Services, Inc. (Kelly Services). These five temporary employees hired from PAI worked on housing discrimination cases as investigators, which DHR now hires through the State of New York Department of Civil Service at the hourly rate of \$32. The Inspector General notes that the investigator position is a non-legal position.

Penda Aiken, the owner and operator of PAI, testified under oath and admitted that the temporary employees that her company provided to DHR were hired outside of the OGS contract. Specifically, Aiken testified that PAI’s arrangement with DHR began in late 2011 or early 2012, with a telephone call from the principal account clerk at DHR:

It came as a phone call whereby we were told that there was some moneys that were outside the OGS contract arrangement that we normally service them under, [and] that they [DHR], in turn, would be needing a group of workers, of which it wound up being these seven [temporary employees]. . . . Under that arrangement, the negotiated bill and pay was established.

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<sup>15</sup> N.Y. State Fin. Law §§ 112, 163.

<sup>16</sup> DHR hired two additional “HR assistants” from PAI, one in August 2012, and one in September 2012. When two of the three HR Assistants left the agency in mid-2013, DHR hired two “project assistants” from PAI to replace them. One “project assistant” remained at DHR through October 2013, and the second “project assistant” remained at DHR through March 2014. The “HR Assistant” initially hired in December 2011 remained at DHR through September 2013.

Aiken admitted that PAI did not have a formal written contract for the temporary employees with DHR; instead, she claimed that PAI and DHR reached an agreement through a series of emails and telephone calls. Moreover, Aiken testified that this was the first time that PAI had provided services to a state agency without a written agreement. Nonetheless, Aiken said that she was not concerned about the absence of a written contract because PAI had a long-standing relationship with DHR.

In addition to the five temporary employees noted above, in July 2012, DHR also hired “financial analyst” from PAI. The title of “financial analyst” was not an authorized title under the OGS temporary personnel contract, and there was no pre-approved billing rate for the position. The financial analyst worked in DHR’s Housing Contract Unit and helped prepare reports related to HUD contracts and grants. PAI billed DHR \$45.36 per hour for the “financial analyst,” who worked at DHR until February 2014. DHR now hires administrative aides through the Department of Civil Service. Like the financial analyst position, these administrative aides assist with the preparation of reports and written materials, and are paid an hourly rate of \$23.

In July 2012, DHR also hired a paralegal from PAI, who remained at the agency until March 2014. Although the OGS temporary personnel contract authorized PAI to provide temporary paralegals, the authorized billing rate was \$24.87 per hour. Nonetheless, PAI billed the temporary paralegal to DHR at \$48.83 per hour. The OGS commissioner did not authorize the increased billing rate, meaning any agreement to modify the temporary personnel contract was non-binding with respect to DHR.<sup>17</sup> Aiken testified that this temporary paralegal was among the seven temporary employees that PAI provided to DHR outside of the OGS temporary personnel contract.

Because the billing rates and job titles were not authorized by the OGS temporary personnel contract, State Finance Law required DHR to initiate a new procurement process for the temporary employees.<sup>18</sup> Although state agencies may conduct an independent procurement when the services they need are not available through a preferred source or an OGS centralized contract, such purchases must comply with the discretionary buying thresholds and competitive bid requirements of State Finance Law section 163.<sup>19</sup> State agencies may make discretionary

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<sup>17</sup> Temporary Personnel Contract, Appendix B, General Specifications, ¶ 40.

<sup>18</sup> N.Y. State Fin. Law § 163; 9 N.Y.C.R.R. § 250.4.

<sup>19</sup> N.Y. State Fin. Law § 163(4)-(5); 9 N.Y.C.R.R. § 250.4.

purchases of services and commodities up to \$50,000 without a formal competitive bidding process, and up to \$200,000 when purchasing commodities and services from a certified MWBE vendor such as PAI.<sup>20</sup> The threshold amount, however, is based upon the agency's reasonably expected aggregate amount for purchases of the same services within a twelve-month period, starting on the first date of service.<sup>21</sup> Moreover, agency discretionary purchases between \$50,000 and \$200,000 from an MWBE vendor must be advertised in the New York State Contract Reporter. Agencies must also obtain written quotes from at least three vendors.<sup>22</sup>

In this instance, DHR's aggregate spending on temporary employees from PAI exceeded the \$200,000 spending limit on discretionary purchases from an MWBE vendor. Before leaving DHR in August 2013, Rolandi prepared a memorandum to Commissioner Galen D. Kirkland and First Deputy Commissioner Valerie P. Dent, setting forth his proposed strategy for MWBE spending for the remainder of fiscal year 2013-2014 (April 1, 2013 through March 31, 2014). The July 2013 memorandum notes that DHR spent approximately \$284,000 on temporary personnel from PAI during fiscal year 2012-2013 (April 1, 2012 through March 31, 2013): \$84,000 more than the discretionary spending limit for agency purchases from an MWBE vendor.

When the services to be purchased by a state agency exceed the discretionary purchasing threshold, the agency may request that OGS procure such a service, or the agency may procure the service independently or in conjunction with another state agency.<sup>23</sup> Moreover, State Finance Law mandates that state contracts in excess of \$50,000 must be filed with the Office of the State Comptroller before they are executed or become effective.<sup>24</sup> DHR failed to comply with any of these statutory requirements.

Like state agencies, parties that contract with the state are responsible for knowing, and are bound by, the statutes that regulate the state's contracting power. PAI's extra-contractual agreement with DHR was not submitted to or approved by the Office of the State Comptroller, meaning the parties failed to satisfy the statutory prerequisites for a valid, enforceable contract.

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<sup>20</sup> N.Y. State Fin. Law § 163(6), (9)-(10); Procurement Council, *NYS Procurement Bulletin Discretionary Purchasing Guidelines*, at 1.

<sup>21</sup> N.Y. State Fin. Law § 163(6-b); Procurement Council, *NYS Procurement Bulletin Discretionary Purchasing Guidelines*, at 2.

<sup>22</sup> BSC Purchasing Requirements, at 3.

<sup>23</sup> N.Y. State Fin. Law § 163(4)-(5).

<sup>24</sup> N.Y. State Fin. Law § 112(2)(a).

**DHR and Kelly Services Failed to Comply with the Amendment Provisions of the Temporary Personnel Contract**

The Inspector General found that DHR and Kelly Services violated the terms of the OGS temporary personnel contract by hiring a temporary attorney at a higher billing rate than the rate established by the OGS temporary personnel contract. Kelly Services did not submit the amended terms to the OGS commissioner or enter into a written agreement with the commissioner, as required to amend an OGS contract. Failure to enter into a written agreement with the commissioner rendered the amendment invalid and non-binding against the authorized user, in this case DHR.<sup>25</sup>

The investigation revealed that from July 2012 through December 2013, DHR employed a temporary attorney from Kelly Services at the unauthorized billing rate of \$56.80 per hour. Although the OGS temporary personnel contract authorized Kelly Services to provide temporary attorneys, the billing rate was \$50.67 per hour under the contract price list then in effect. Neither DHR nor Kelly Services provided evidence to the Inspector General that this increased rate was submitted to or approved by OGS.

The Inspector General determined that Edward Watkins, deputy director for the Federal Programming Unit, approved the increased rate for the temporary attorney. Rolandi, who supervised procurement, failed to notice that the billing rate exceeded the OGS contract rate. Specifically, in a June 2012 email, DHR informed Kelly Services that it wanted to hire a particular candidate as a temporary attorney at the pay rate of \$40 per hour, excluding fees charged by Kelly Services. The \$40 hourly pay rate came from a June 2012 budget worksheet that Watkins submitted to HUD in connection with a Fair Housing Assistance Program Partnership Grant (HUD Partnership Grant), which provided funds to DHR to litigate Fair Housing Act cases. Notably, the budget worksheet prepared by Watkins calculated expenses of \$399,840 for temporary employees over the grant's two-year term, but did not include employment agency fees as part of the overall budget. DHR used part of the HUD Partnership Grant funds to hire two temporary employees: the temporary attorney from Kelly Services, and the temporary paralegal from PAI.<sup>26</sup>

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<sup>25</sup> Temporary Personnel Contract, Appendix B, General Specifications, ¶ 40.

<sup>26</sup> As discussed earlier in this report, DHR hired the temporary paralegal from PAI at the hourly billing rate of \$48.83. The HUD budget worksheet included a paralegal at the hourly rate of \$30; PAI's authorized billing rate for

In response to DHR's request, Kelly Services informed DHR that it was unable to stay within state contracting guidelines at the \$40 hourly pay rate, and that its all-inclusive billing rate for the temporary attorney would be \$56.80 per hour (not the \$50.67 billing rate established by the OGS temporary personnel contract). As noted above, any modifications or amendments to a state centralized contract require a written agreement between the OGS commissioner and the contractor. Nonetheless, there is no evidence that Kelly Services submitted the increased rate request to, or obtained approval from, OGS.

Instead of inquiring whether DHR and Kelly Services could exceed the state contract rate, Watkins sent an email to Rolandi, stating that he believed the employment agency fees were factored into the grant budget and that any contingencies could be covered with funds for administrative costs. Rolandi then sent Kelly Services an email, stating that the all-inclusive billing rate of \$56.80 for the temporary attorney was approved.

Watkins testified under oath that he was not familiar with the OGS contract, and he was concerned primarily with the HUD Partnership Grant budget when DHR hired the temporary employees. When asked about the email from Kelly Services stating it could not stay within state contracting guidelines, Watkins responded, "I looked at it probably and said, 'That's not relevant to me.' You know, work it out with [Division of] Budget and the State." Watkins said that he believed that any contract pricing issues should have been resolved by DHR's hosting agency, which was either the Division of Budget or OGS, and that Rolandi was responsible for addressing such matters. Watkins further noted that the temporary employee invoices were processed by the Division of Budget or OGS, and he believed those agencies were responsible for informing DHR about any failure to comply with the terms of the temporary personnel contract. "If there was something that they [Division of Budget and OGS] weren't supposed to do because of this contract pricing guide, they should have been the ones to say 'you can't do it,'" he said.

In his interview with the Inspector General, Rolandi demonstrated that he did not understand state purchasing requirements. When asked why the billing rate for the temporary

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paralegals under the state centralized contract was \$24.87. DHR also used HUD Partnership Grant funds to hire the "financial analyst" from PAI at the hourly billing rate of \$45.36. The HUD budget worksheet listed this position as a "program assistant" to be paid \$28 per hour. There was no such job title or billing rate under the OGS temporary personnel contract.

attorney from Kelly Services exceeded the billing rate in the OGS temporary personnel contract, Rolandi testified that he believed the approved rates in the OGS contract were simply “a range.” When the Inspector General informed Rolandi that the contract rates were maximum billing rates, Rolandi responded, “Well, then you may know something more than I do.” Rolandi also testified that he did not need authorization to exceed the OGS contract rates—in direct contradiction to contract provisions mandating that the OGS commissioner approve any modifications or amendments to the contract.<sup>27</sup> Rolandi then asserted that he would not have made rate determinations independently, but would have “consulted with the Division of the Budget and OGS to see what we could do.” There is no evidence, however, that Rolandi, or anyone else at DHR, obtained approval for the increased rate from either the Division of Budget or OGS.

As noted above, other than terms more favorable to the agency, all amendments or modifications of the OGS contract require a mutual written agreement between the contractor and the OGS commissioner. There is no evidence of a mutual written agreement between Kelly Services and OGS. Thus, the agreement to a higher billing rate was not valid or binding against the authorized user of the contract, in this case DHR.<sup>28</sup>

It should be further noted that the OGS temporary personnel contract required approval by the Office of the Attorney General when an agency hired outside counsel.<sup>29</sup> The Inspector General found no evidence that DHR obtained such approval.

### **The Division of Budget and OGS Business Service Center Relied on DHR to Check Invoices and Paid PAI and Kelly Services Invoices without a Purchase Order**

From approximately June 2008 through March 2012, the Division of Budget hosted procurement and administrative functions for DHR. Hosted agencies are typically too small to have their own administrative departments, such as a finance, business, or purchasing

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<sup>27</sup> Temporary Personnel Contract, Appendix B, General Specifications, ¶ 40.

<sup>28</sup> *Id.*

<sup>29</sup> Temporary Personnel Contract, p. 23; State of New York Office of the Attorney General, *Memorandum to All State Agencies & Departments Re: Outside Counsel Contracts*, Temporary Personnel Contract, at 40-41 (April 2006).

department. The host agency assumes day-to-day administrative or support functions for the smaller agency, such as purchasing, accounts payable, payroll, or employee benefits.

When DHR hired the first “HR Assistant” from PAI in December 2011, the Division of Budget was responsible for processing DHR’s vendor invoices. As noted earlier, the OGS temporary personnel contract did not authorize PAI, or any other vendor, to provide temporary employees for the job title “HR assistant,” or authorize the \$48.83 billing rate that PAI charged DHR. According to the Division of Budget, DHR staff was responsible for checking vendor invoices against the OGS contract before sending the invoices to the Division of Budget for processing. Because the Division of Budget relied on DHR to check the vendor invoices against the temporary personnel contract, errors made in the initial hiring from PAI continued with the other temporary employees subsequently hired by DHR.

In April 2012, OGS began hosting DHR’s finance functions, including purchasing and accounts receivable. As part of the hosting relationship, OGS processed vendor invoices for DHR, including the invoices for the temporary employees that DHR hired from PAI and Kelly Services. OGS similarly relied upon DHR to review the vendor invoices against the temporary personnel contract before processing the invoice for payment.

In approximately September 2012, OGS opened the Business Services Center—a centralized office for processing human resources and finance transactions for all New York State Executive agencies. The purpose of the Business Services Center is to streamline transactional services, including accounts payable, purchasing, travel reimbursement, and credit card administration. The Business Services Center accounts payable division processes vendor invoices, including invoices for goods and services provided to DHR.

Notably, OGS and the Business Services Center processed the invoices from PAI and Kelly Services, despite the fact that DHR had not obtained purchase orders for fiscal year 2012-2013. A purchase order is a basic contractual document issued by the agency’s finance office or other authorized individuals. The purchase order confirms the terms of purchase, including the vendor’s name, address, a description of the item, total cost, and the applicable OGS or purchase authorization contract number.<sup>30</sup> A vendor that provides temporary personnel services to an

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<sup>30</sup> Procurement Council, *NYS Procurement Bulletin Discretionary Purchasing Guidelines*, at 11.

agency pursuant to an OGS centralized contract submits to the Business Services Center invoices that document the hours worked, the employee who worked them, and the employee billing rate. The Business Services Center is supposed to review the vendor invoice to ensure that the agency has a purchase order for the services and that funding is available before sending the invoice to the agency for approval. Once the agency authorizes payment, the invoice is approved by the Business Services Center and sent to the Office of the State Comptroller for payment. The vendor is responsible for paying the temporary employee.

Although the invoices from Kelly Services and PAI should not have been paid without a purchase order, the Business Services Center sent approved invoices to the Office of State Comptroller for payment. A former supervisor for the accounts payable department of the Business Services Center informed the Inspector General that the invoices may have been paid in error. This former employee indicated that when the Business Services Center began providing hosting services for DHR, the Business Services Center did not have adequate controls in place and gave DHR time to comply with Business Service Center policies. According to the former employee, the Business Services Center gave DHR until the end of the fiscal year 2012-2013 to come into compliance, and then stopped paying the invoices for PAI and Kelly Services because DHR did not have a purchase order.

Regardless of the reason, the continued payment of the employment agency invoices without a purchase order and/or the reliance upon DHR to check the invoices against the temporary personnel contract compounded the initial errors made by DHR, PAI, and Kelly Services. Payment of the invoices also contributed to a misplaced confidence at DHR that the transactions were legitimate. Rolandi testified that he believed that OGS would have contacted him or stopped payment of the invoices if there was a problem with the pricing or if the terms did not comply with the OGS contract. Similarly, Watkins testified that he believed the Division of Budget or OGS would have informed DHR if there was something wrong with the temporary employee billing rates because “everything went through them.”

#### **DHR Failed to Conduct a New Procurement after the OGS Temporary Personnel Contract Expired**

The OGS temporary personnel contract expired on November 18, 2012. OGS replaced the expired contract with a new administrative services contract that became effective on

October 25, 2012; however, “attorney” and “paralegal” were not authorized job titles, and DHR could not retain the temporary employees at the division under the new contract. According to Rolandi, DHR needed to keep the temporary employees on staff to meet the division’s mandated caseload targets. Nonetheless, the Inspection General found that Rolandi was uninformed regarding state contracting requirements and did not initiate the procurement process required to keep the temporary employees on staff.

The investigation revealed that on November 6, 2012, one of the temporary attorneys from Kelly Services notified her supervisor that her contract expired in approximately two weeks. In response, Rolandi contacted Bill Macey, a contract management specialist 3 in the Bureau of Contracts, in Financial Administration at OGS. Macey forwarded OGS’s new administrative services contract to Rolandi, who soon discovered that attorneys and paralegals were no longer authorized job titles.

On November 12, 2012, Rolandi sent an email to OGS to ask whether DHR could obtain an extension of the temporary personnel contract that was set to expire or if another temporary agency was authorized to provide attorneys or investigators under the new contract. Later that day, Rolandi received an email from Franklin Hecht, chief financial officer at OGS, which said that OGS could extend the current contract until December 31, 2012, if the current vendor agreed. On November 13, 2012, Macey wrote an email advising Rolandi that the current OGS contract allowed for an extension of services until March 31, 2013, the end of the state fiscal year, assuming the agency purchase order was written accordingly.

On November 14, 2012, Macey sent Rolandi an email stating that OGS could not find a current purchase order for the temporary employees at DHR. Macey asked whether, in lieu of a purchase order, Rolandi was using his New York State Procurement Card (P-Card) to pay the employment agency invoices. That same day, Rolandi responded that DHR had a purchase order for the temporary employees for fiscal year 2011-2012, and had used the agency P-Card for payments to the employment agencies in fiscal year 2012-2013.

In an email dated November 16, 2012, Macey informed Rolandi that OGS had concluded that DHR could not use the new administrative services contract to retain the temporary employees. Macey’s email also stated that he discussed the temporary employee situation with Hecht, and they recommended that DHR maintain the “status quo” in the short-term. In the long

term, DHR would be required to conduct a competitive bid and develop a term contract for temporary employee services.

The evidence shows that Rolandi continued the status quo by obtaining a series of email “extensions” from Kelly Services and PAI in which the parties agreed to extend the contract for the temporary employees, first through the end of 2012, then through May 31, 2013, and finally until December 31, 2013. Although OGS had informed Rolandi that it could extend the temporary personnel contract until December 31, 2012, there is no record that the two subsequent extensions to May and December were submitted to or authorized by OGS.

Despite the fact that OGS provided guidance and assigned another contract management specialist to assist with the procurement process, Rolandi admitted that he did not initiate a new contract for the temporary employees:

OGS told us that a new contract was going to take anywhere from six to nine months to a year. . . . We knew [the OGS contract] was going to end. We were told ‘you’ll have a transition period; how long, we do not know. We will try to do the best we can. Try to pay as many bills as you can. But then to prepare for a new replacement contract. Which I have to tell you, I wasn’t working putting contract documents together. That wasn’t my job. Somebody else at DHR was going to have to do that.

Rolandi also attributed his failure to initiate a new procurement to personnel changes at DHR and the fact that he was preparing to leave the agency. “There was no First Deputy. I’m starting to transition out,” he said.<sup>31</sup> “So, maybe . . . in the mix, maybe something just wasn’t done.”

Kelly and PAI continued to provide temporary employees to DHR pursuant to the unauthorized extensions for the unauthorized job titles and/or at unauthorized billing rates. OGS paid invoices for PAI and Kelly Services through March 31, 2013, the end of the state fiscal year. The Business Services Center then stopped payment of the employment agency invoices because OGS did not have a purchase order for the temporary employees from DHR.<sup>32</sup>

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<sup>31</sup> Rolandi’s statements to investigators were incorrect. The OGS contract expired, and Rolandi was informed that DHR needed a new contract, in November 2012. First Deputy Commissioner Burgos did not resign from DHR until June 2013; Rolandi left DHR in August 2013.

<sup>32</sup> The investigation found that some PAI invoices were paid after April 1, 2013, the start of fiscal year 2013-2014.

In July 2013, two PAI temporary employees who investigated housing cases under the unauthorized title of “HR assistant” left DHR. Despite a number of unpaid invoices, PAI provided two new “project assistants” to DHR at an hourly billing rate of \$48.83. The title “project assistant” was still not an authorized title under the administrative services contract, and there was no corresponding billing rate. PAI now had a total of five temporary employees at DHR without a written, state-authorized contract: the two new “project assistants,” an “HR assistant,” a paralegal, and a “financial analyst.” Kelly Services had two temporary attorneys at DHR, similarly without a contract.

### **Rolandi Uses New York State Procurement Card to Pay Kelly Services Invoices**

After OGS and the Business Services Center stopped paying the invoices from PAI and Kelly Services, Rolandi used his New York State Procurement Card (P-Card) to pay Kelly Services for one of the two temporary attorneys still at DHR. The P-Card program is a procurement and payment method designed to expedite purchases and payments by certain agency-authorized employees. Rolandi testified that he used the P-Card to pay Kelly Services based on purported advice by Macey to “pay what you can until we can get the contract situation ironed out.” Rolandi also testified that Macey referred to this practice as “going under the radar.” Under oath, Macey denied that he told Rolandi to use the agency P-Card to pay for the temporary employees or that he suggested that it might be a way for DHR to proceed “under the radar.”

The Inspector General notes that Rolandi did not use the P-Card to pay PAI after the Business Services Center stopped payment of the temporary employee invoices. In his interview, Rolandi could not recall why he did not use the P-Card to pay PAI, but suggested that PAI may not have accepted credit card payments. Rolandi also noted that the P-Card had a monthly credit limit of approximately \$40,000. The Inspector General also notes that Rolandi repeatedly mismanaged the use of the agency P-Card. Notably, Citibank suspended DHR’s P-Card from January 2013 through March 2013 due to late payments. After Rolandi’s departure in August 2013, DHR also discovered that he had failed to properly reconcile more than 700 P-Card transactions.

### **Corrective Action at DHR Under New Leadership**

DHR's new senior staff uncovered evidence of financial mismanagement following Rolandi's departure at a meeting with representatives of OGS, BSC, and DOB. Subsequently, while DHR and OGS were working to resolve issues surrounding the arrangement with PAI and Kelly Services, in an effort to ensure the continued employment of the temporary workers, DHR identified and informed OGS of the discrepancy between the hourly rates that DHR was paying to the employment agencies and the rates authorized by the previous OGS contract. At this juncture, DHR instructed OGS not to authorize any further payments to PAI and Kelly Services and referred the matter to the Inspector General.

During the course of this investigation, new executive management was installed, and DHR has taken several actions to address the problems within the Finance Department and with temporary employee hiring. First, DHR obtained permission from the Department of Civil Service to hire hourly employees in lieu of temporary employees. DHR paid attorneys hired through Civil Service at the permissible rate of \$40 per hour; investigators at the permissible rate of \$32 per hour; paralegals at the permissible rate of \$25 per hour; and administrative aides at the permissible rate of \$23 per hour.

In addition, the Inspector General notes that DHR has restructured its senior staff to ensure more accountability in the management and oversight of its finances and federal programs. DHR also completed a process of auditing and reconciling Rolandi's P-Card transactions to resolve the financial problems that it inherited from Rolandi's mismanagement of the agency's finances.

## FINDINGS AND RECOMMENDATIONS

The Inspector General found that the Division of Human Rights and Penda Aiken Inc. violated state contracting laws and the Office of General Services temporary personnel contract by hiring seven temporary employees for job titles and at billing rates that were not authorized by the state centralized contract or otherwise approved by the Office of General Services. The owner and operator of Penda Aiken Inc., Penda Aiken, testified under oath and admitted that the company's arrangement with the Division of Human Rights was "outside of the OGS [Office of General Services] contract for personnel." Because the temporary employees were hired outside of the state centralized contract, the Inspector General determined that the Division of Human Rights was required to follow the discretionary purchase or competitive procurement processes

of State Finance Law section 163, but failed to do so. The investigation also revealed that the Division of Human Rights and Penda Aiken Inc. failed to obtain approval of their contractual arrangement from the Office of the State Comptroller, as required by State Finance Law section 112 for any state agency contract (other than purchases through a state centralized contract let by the Office of General Services) that exceeded \$50,000. Rolandi was responsible for procurement at the Division of Human Rights, including the hiring of temporary employees, during this time period, but failed to comply with these requirements.

The Inspector General also found that the Division of Human Rights and Kelly Services Inc. violated the Office of General Services temporary personnel contract by hiring a temporary attorney at a billing rate in excess of the rate authorized by the state centralized contract. Specifically, Kelly Services Inc. did not obtain approval for the increased rate from the commissioner of the Office of General Services, as required by the state centralized contract. Rolandi claimed that the unauthorized rate was approved by Watkins, who oversaw the Federal Programs Unit in which the temporary attorney worked.

Moreover, the Inspector General found that after the Office of General Service temporary personnel contract expired in November 2012, the Division of Human Rights continued to employ temporary personnel from Penda Aiken Inc. and Kelly Services Inc. for these unauthorized titles and/or at unauthorized billing rates without a new state contract. The investigation revealed that Rolandi knew that the division needed a new contract for the temporary employees, but failed to take any steps to conduct a new procurement process and institute a new contract. After the end of the state fiscal year on March 31, 2013, the Office of General Services stopped payment of the invoices from Penda Aiken Inc. and Kelly Services Inc. after determining that the Division of Human Rights did not have a purchase order for temporary employee services.

Nonetheless, certain temporary employees from Penda Aiken Inc. and Kelly Services Inc. continued working at the division without a new contract, in some cases through March 2014, to assist in the completion of certain matters, while many of the employment agency invoices remained unpaid.

The Inspector General notes that current management at the Division of Human Rights initiated the referral of this matter to the Inspector General based on discrepancies it uncovered

and has taken several actions to address the problems within the finance department and with temporary employee hiring. Notably, Watkins left the Division of Human Rights in January 2013. Rolandi, who was responsible for the division's failure to comply with state purchasing requirements, left the Division of Human Rights in August 2013. The Division of Human Rights has restructured its senior staff to ensure more accountability in the management of its finances and oversight of the Federal Programs Unit. Further, the Division of Human Rights obtained permission from the State of New York Department of Civil Service to hire hourly employees in lieu of temporary staff.

Nonetheless, the Inspector General recommends that the Division of Human Rights take steps to ensure that agency procurements are conducted in accordance with the State Finance Law and related guidelines. The Division of Human Rights should also ensure that all employees involved in procurement are familiar with the Business Services Center's purchasing and accounts payable protocols, including any future revisions. Periodic audits should also be conducted to ensure compliance with procedures.

With regards to outstanding invoices from Kelly Services Inc. and Penda Aiken Inc., the Inspector General recommends that the Office of General Services and the Division of Human Rights calculate a fair and reasonable rate for the temporary employee services provided, which should be based upon the rates set forth in the temporary personnel contract in effect between November 2007 and November 2012.

The Inspector General further recommends that a vendor responsibility investigation pursuant to State Finance Law section 163(9)(f) be performed to determine whether Penda Aiken Inc. and Kelly Services Inc. are responsible contractors/bidders.