



State of New Jersey

OFFICE OF THE STATE COMPTROLLER
P.O. Box 024
TRENTON, NJ 08625-0024

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

MARC LARKINS
Acting State Comptroller

November 6, 2014

Mr. Gary M. Lanigan
Commissioner
Department of Corrections
Central Office
PO Box 863
Trenton, NJ 08625

Re: Follow-Up Report F-10

Dear Commissioner Lanigan:

Pursuant to the State Comptroller's authority as set forth in *N.J.S.A. 52:15C-1 et seq.*, we have followed up on the actions taken by the Department of Corrections (DOC) to implement the recommendations contained in our audit report, *Department of Corrections, Office of Community Programs: Residential Community Release Program* (Report PA-13), issued on June 15, 2011. Our findings and conclusions are set forth below.

Background, Scope and Objectives

Our initial audit report identified significant weaknesses in DOC's internal controls concerning monitoring and contracting in the Residential Community Release Program (RCRP). These weaknesses manifested themselves across numerous fiscal and operational areas.

The objective of our follow-up engagement was to determine if DOC has implemented the 28 recommendations contained in our initial audit report.

During fiscal years 2011-2013, a total of 18 RCRP facilities were operating. By fiscal year 2014, the total number of RCRPs was reduced to 16.

For purposes of this follow-up, we visited and conducted testing at five RCRPs operated by four providers under contract with DOC. Three of these providers (Education and Health Centers of America; The Kintock Group; and New Jersey Association on Correction) were visited during

our initial audit. For this follow-up, we also selected the facility of a fourth provider (Urban Renewal Corporation) that we had not reviewed during our initial audit.

Summary Conclusion

We found that DOC officials have made significant progress in implementing the recommendations contained in our initial audit report. Of the 28 prior audit recommendations, 20 recommendations have been implemented and 7 recommendations have been partially implemented. The status of 1 recommendation could not be determined at this time.

Status of Initial Audit Recommendations

Recommendation 1

Update the ACES [Accountability, Counseling, Employment and Substance Abuse] evaluation form to include the 16 additional test items identified in Appendix A.

Status: Implemented

Our initial audit found that DOC's Office of Community Programs (OCP) principal monitoring tool, the ACES evaluation form, used by OCP's Contract Administrators (Administrators) to assess the level and quality of services provided by the RCRPs, did not require the level of testing necessary to verify the extent and quality of services being performed. We identified 16 additional test items that should have been added to ACES to enhance DOC's monitoring of service providers.

In response to our initial audit, DOC stated that it recognized the need to enhance its monitoring of service providers and had nearly completed the design of an expanded monitoring tool, the Contract Compliance Evaluation System (CCES). The CCES monitoring tool was implemented in July 2011.

Our comparison of the updated CCES form with the former ACES testing tool found that 12 of the 16 items we recommended were fully incorporated into CCES and 4 were partially incorporated. The partially incorporated test items omitted from the CCES form included steps such as verifying that any liquidated damages had been assessed and paid, and touring the RCRP during all site visits. Although these items were not incorporated into the ACES form, we determined that these items were, in fact, being addressed through other means.

Recommendation 2

Enforce DOC requirements concerning the number of days each Administrator should spend in the field.

Status: Implemented

Our initial audit found that Contract Administrators were not in the field the required number of days as indicated on the ACES monitoring tool. As per ACES: “Each Contract Administrator has a caseload of programs that he/she is responsible for” and “Every Contract Administrator is expected to be in the field at their respective programs, a minimum of four days per week. One day per week will be spent in the Office to complete reports.”

Following our initial audit, DOC officials determined that an Administrator should be in the field at least two or three days per week. An internal memo sent to the contract compliance unit indicated similar expectations. Our review of schedules showed that, on average, full-time Administrators spent two or three days per week in the field.

Recommendation 3

Conduct and document both scheduled and unscheduled site visits as required at all RCRPs, including the assessment centers.

Status: Implemented

Our initial audit found that DOC was not conducting and documenting both scheduled and unscheduled site visits at all RCRPs, including its two assessment centers. For our follow-up engagement, we selected a sample of 36 DOC site visit reports. Each report sampled contained a stamp indicating whether or not the visit was announced or unannounced. Of the 36 sampled site visits, which included visits to both assessment centers, 25 were unannounced and 11 were announced.

Recommendation 4

Enforce the requirement that Administrators use the ACES evaluation form every time a site visit is conducted.

Status: Implemented

As indicated concerning Recommendation 1, in July 2011, DOC began using the CCES evaluation tool. For the 36 sampled site visit reports referred to concerning Recommendation 3, we determined if Administrators used the CCES form for each site visit. All 36 site visit reports had a CCES form completed for the date and location visited.

Recommendation 5

Do not provide RCRPs with advance schedules of supposedly unannounced site visits.

Status: Partially Implemented

Our initial audit found that Administrators were not conducting unannounced site visits, as required. During our follow up, we visited five RCRP facilities to determine if the RCRPs were provided with advance schedules that included supposedly unannounced site visits. We accompanied the Administrators and used observation and conversations with RCRP staff to determine whether advance notice was given on an unannounced visit. Of the five facilities visited, one did not have an unannounced site visit. Although documented as an “Unannounced Site Visit,” we determined that the RCRP staff was aware of the Administrator’s visit on the day of our site visit. The remaining four RCRP locations had valid unannounced visits.

Recommendation 6

Document all incidents noted during site visits on a site visit report and require that on the next visit the Administrator verify that such issues have been addressed.

Status: Implemented

For the 36 site visit reports referred to concerning Recommendation 3, we determined if incidents noted during the Administrator’s visit were properly documented and if the incidents, where necessary, were addressed during a subsequent visit. Of the 36 reports tested, 7 contained notes relating to some type of incident or issue that had taken place at the facility. All 7 incidents were followed up and addressed by an Administrator during a subsequent visit.

Recommendation 7

Enforce the requirement that OCP supervisory staff sign off on and date all site visit reports.

Status: Implemented

Our review of the 36 site visit reports referred to previously found that all 36 reports were signed and dated by OCP supervisory staff.

Recommendation 8

Tour the RCRPs during each site visit and document any exceptions requiring attention.

Status: Implemented

For the 36 site visit reports referred to previously, we determined if Administrators toured the RCRPs during each site visit and documented any exceptions requiring attention. Of the 36 reports, 32 indicated that a tour was performed by the Administrator during the visit with 1 report documenting an exception requiring attention. The remaining four reports did not indicate that a tour was performed so it was unclear as to whether or not a tour was actually taken. DOC provided us with updated CCES forms that included a specific check box called "walk through facility" which will indicate that a walk through is completed and documented during each site visit.

Recommendation 9

Ensure enforcement of security requirements regarding entrance into RCRP facilities.

Status: Partially Implemented

Two of the five facilities we visited did not require our auditors to provide identification upon entry into the facility.

Recommendation 10

Ensure enforcement of requirements concerning RCRPs using proper safety measures and maintaining a safe environment.

Status: Implemented

While at the five RCRPs mentioned above, we determined if proper safety measures were being used and if a safe environment was being maintained. We toured each of the five facilities and noted any hazardous or unsafe issues that we found. At four of the facilities, we did not observe any major issues and felt the RCRPs were using proper safety measures and were maintaining a safe environment for the residents. The fifth facility had several minor safety issues.

Recommendation 11

Verify that all RCRPs are adhering to requirements concerning notification of local authorities when residents are working or attending school in the community.

Status: Implemented

For our follow-up, we selected a sample of 70 residents at 5 RCRP locations, of which 45 were working. According to the Request for Proposal (RFP), the RCRP shall notify local law enforcement authorities, in writing, if the individual is employed in the community. Of the 45 residents tested, all of them had a notification to law enforcement regarding their employment in the community.

Recommendation 12

Verify that RCRP staff perform and record resident employment and education site visits.

Status: Partially Implemented

For our follow-up, we selected a sample of 70 residents from 5 RCRP locations, of which 60 were either in school or working during the time of our visit. According to the RFP, RCRP staff must conduct on-site evaluations of employment or education sites. Of the 60 residents tested, 7 did not have any record of a site visit by RCRP staff to the respective work or school location.

Recommendation 13

Require Administrators to select their own sample of files to be tested.

Status: Implemented

At the five RCRP facilities referred to previously, the Administrators, as well as RCRP staff, stated, and we observed, that DOC Administrators are selecting their own samples to be tested.

Recommendation 14

Enforce DOC requirements concerning substance abuse testing at RCRPs.

Status: Partially Implemented

For our follow-up, we selected a sample of 70 residents from the 5 RCRP facilities to determine if RCRPs are following proper requirements regarding substance abuse testing as per the RFP. Of the 70 resident files sampled, 10 did not comply with all substance abuse testing requirements. The majority of these exceptions (8 out of 10) were found at 1 RCRP facility.

Recommendation 15

Ensure that RCRPs maintain accurate medication inventory records regarding intake and dispensing of medication to residents.

Status: Partially Implemented

For our follow-up, we selected 28 files of residents at 5 RCRP facilities who are currently taking medication to test and ensure accurate medication inventory records. We printed the system's computerized count of current medications for these individuals and then physically counted the medications on hand to determine if they matched the current noted balance to ensure accurate record maintenance by the RCRP. Of the 28 files tested, 4 did not reconcile to the current medication count on hand. All exceptions were found at one RCRP location.

Recommendation 16

Verify that each resident's file contains a counseling, treatment and discharge plan and that all forms have the required signatures.

Status: Partially Implemented

For the sample of 70 residents discussed concerning Recommendation 14, 9 did not have all of the required document signatures in their files. All nine of these exceptions were found at one RCRP facility.

Recommendation 17

Assess liquidated damages where appropriate.

and

Recommendation 18

Conduct and document required investigations regarding escapes and other circumstances that would support an assessment of liquidated damages.

Status: Implemented

As part of our follow-up, we reviewed a listing of 22 escapes that were presented to the Liquidated Damages Review Committee (LDRC) during fiscal years 2012 and 2013 and selected 5 for our review. The LDRC is responsible for determining if liquidated damages should be assessed for escapes or other special incidents that occur at the RCRPs. The LDRC found that 3 of the 5 escapes should be "approved" for assessment of liquidated damages and 2 were denied because the LDRC could not find any procedure or protocol violations by the RCRPs.

Recommendation 19

Enforce the contract requirement that all RCRPs have a secured holding area in close proximity to the central control room to monitor residents.

Status: Implemented

DOC Administrators are now required to verify the existence of a secure holding area at the RCRP locations when evaluating the "physical plant" portion of the CCES form. We obtained copies of recently completed CCES forms relating to the "physical plant" evaluation section. All forms indicate the existence of a secure holding area at the RCRPs. In addition, we observed a

secured holding area within close proximity to the central control room at each of the five RCRPs visited.

Recommendation 20

Require that the RCRPs develop and implement processes to deter and avoid resident escapes, including consideration of the training and use of appropriate security personnel.

Status: Implemented

Our initial audit identified that some escapes were due to the lack of a secured holding area. As indicated concerning Recommendation 19, DOC now requires and verifies the existence of a secured holding area at all locations. According to DOC, while our recommendation was considered, DOC did not feel that the use of trained, professional security personnel was in-line with the goals of the RCRP.

Recommendation 21

Ensure that RCRPs take appropriate steps regarding vacant employment positions as required by contract.

Status: Implemented

DOC has taken steps to ensure vacant employment positions at the RCRPs are filled in a timely manner. According to the Request For Proposals (RFP), each RCRP shall submit a quarterly staff roster that DOC can utilize to track vacancies. DOC informed us that notices are sent to vendors that have vacancies over 30 days. These “Notice to Cure Contractual Deficiency/ies” letters inform the RCRP that they need to fill the vacant positions or be charged liquidated damages. During our testing, we reviewed 14 RCRP rosters and found that 9 RCRPs received Notice to Cure Contractual Deficiency/ies letters, indicating that appropriate steps are being taken by DOC to help ensure that vacancies do not exist longer than necessary.

Recommendation 22

Provide additional training to RCRP personnel to reduce the number of improperly written disciplinary reports and to ensure appropriate evidence and documentation is submitted to hearing officers.

Status: Implemented

DOC has provided additional training to RCRP personnel, which has helped reduce the number of improperly written disciplinary reports. Copies of the training attendance sheet and Power Point presentations were provided as evidence that such training took place.

Recommendation 23

Consider assessing liquidated damages for repetitive NCFA [No Cause For Action] rulings due to improperly completed reports by RCRP employees.

Status: Implemented

According to DOC, it provided additional training to the RCRPs. DOC data shows that the training has resulted in a reduced amount of NCFA rulings due to improperly completed reports. As a result, DOC does not need to assess liquidated damages at this time.

Recommendation 24

Verify the RCRPs' computations of their per diem budgets and per diem rates submitted.

Status: Implemented

Our initial audit found that DOC overpaid \$587,186 in per diem rates due to mathematical errors. For our follow-up, we reviewed 14 RCRP Proposed Per Diem Rate Schedules, as provided by DOC, to verify the accuracy of the computations as submitted, and found that 13 were accurately computed. For the one inaccurately calculated submission, DOC sent a letter advising the RCRP of the calculation error and determined the correct per diem rate.

Recommendation 25

Obtain the required signatures when making any modifications to RFPs or resulting contracts.

Status: Implemented

Our review of the RFP/contract modifications from DOC found that all modification documents received contained the required signatures.

Recommendation 26

Conduct and document site visits of the assessment centers.

Status: Implemented

As indicated concerning Recommendation 3, DOC is now conducting and documenting site visits to the assessment centers.

Recommendation 27

Adhere to accreditation requirements for RCRPs as set forth in the RFP.

Status: Could Not Be Determined

The RFP for the new contract period states that the contractor is required to obtain American Correctional Association (ACA) accreditation within 24 months of program commencement. Since all contracts awarded under this RFP began on July 1, 2013, the RCRPs are not required to have ACA accreditation until July 1, 2015. Therefore, we are unable to test for full compliance with the accreditation requirements for those contracts issued under the new RFP. DOC did indicate that, as of July 2014, 8 of the 16 RCRPs have been accredited.

Recommendation 28

Perform an outcome-based evaluation to measure the performance of the RCRPs.

Status: Partially Implemented

DOC is in the process of finalizing a database that can be utilized to perform an outcome-based evaluation to measure the performance of the RCRPs.

Reporting Requirements

We provided a draft copy of this report to DOC officials for their review and comment. Their comments were considered in preparing our final report and are attached as Appendix A.

The Office of the State Comptroller is required by statute to monitor the implementation of our recommendations. To meet this requirement, DOC shall report periodically to this Office advising what additional steps it has taken to address the unresolved issues in this report. This Office will continue to monitor those steps.

We thank the management and staff of DOC for the courtesies and cooperation extended to our auditors during this engagement.

Very truly yours,



William P. Challice, CIA, CFE, CGFM
Director, Audit Division

- c. Marcus O. Hicks, Esq., Director, Office of Community Programs & Outreach Services
- Stephen Matis, Chief Audit Executive



State of New Jersey
DEPARTMENT OF CORRECTIONS
WHITTLESEY ROAD
PO Box 863
TRENTON NJ 08625-0863

CHRIS CHRISTIE
GOVERNOR

GARY M. LANIGAN
COMMISSIONER

KIM GUADAGNO
LT. GOVERNOR

September 10, 2014

William P. Challice, CIA, CFE, CGFM
Director, Audit Division
Office of the State Comptroller
20 West State Street – 12th Floor
PO Box 024
Trenton, New Jersey 08625-0024

Dear Mr. Challice:

The Department of Corrections (DOC) appreciates the opportunity to respond to the Office of the State Comptroller's (OSC) follow-up report regarding the implementation of the recommendations provided in the audit report issued on June 15, 2011 (PA-13), Residential Community Release Program (RCRP).

The DOC has taken the recommendations provided by the OSC very seriously and has worked assiduously to ensure that the recommendations were implemented. DOC is pleased that the OSC has determined that 20 of 28 recommendations were fully implemented. We are pleased that of the remaining eight recommendations, the OSC has determined that seven have been partially implemented and one cannot be determined due to the date of implementation. We also take pride in the fact that the OSC acknowledged that DOC has made "significant improvement" in its oversight of the RCRP's.

The Department will continue to monitor the RCRP's to ensure full implementation and compliance of those recommendations the OSC indicated to be partially implemented.

Sincerely,

A handwritten signature in cursive script that reads "Gary M. Lanigan".

Gary M. Lanigan
Commissioner

c: Judi Lang, Chief of Staff
Mark Farsi, Deputy Commissioner
Darcella Sessomes, Assisant Commissioner
Marcus Hicks, Esq., Director



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P.O. Box 024
TRENTON, NJ 08625-0024

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November 6, 2014

Gary M. Lanigan, Commissioner
New Jersey Department of Corrections
P.O. Box 863
Trenton, NJ 08625

Marcus O. Hicks, Director
Office of Community Programs
New Jersey Department of Corrections
P.O. Box 863
Trenton, NJ 08625

Re: Residential Community Release Program

Dear Commissioner Lanigan and Director Hicks:

As you are aware, in 2011 the Office of the State Comptroller ("OSC") performed an audit of the Residential Community Release Program ("RCRP"). Separate from those matters selected for audit purposes, in the course of our review OSC's Procurement Division identified a series of issues in connection with the procurement of the RCRP services in 2004 and 2010. As a result, we wrote a letter to provide guidance on these issues. We are now following up to evaluate whether the issues we identified in the 2011 letter have been addressed:

(1) ***Initial Findings:***

The Office of Community Programs ("OCP") within the New Jersey Department of Corrections ("DOC") did not have any written, prescribed procedures to guide its procurement processes. Thus, the RCRP procurements that took place in 2004 and 2010 were completed without the benefit of a pre-set process memorialized in agency regulations or policies.

Update:

OCP established RCRP Procurement Procedures effective June 1, 2012. These procedures governed OCP's 2013 procurement of RCRP services. Therefore, consistent with our advice OCP implemented and followed prescribed procurement procedures.

(2) ***Initial Findings:***

The Requests for Proposals ("RFPs") for the 2004 and 2010 procurements required vendors to submit proposed per diem rates for the services to be provided, based on the costs associated with operating the RCRP facilities. The RFPs state that payment of the per diem rates is "contingent upon the Contractor providing adequate documentation" to OCP. However, OCP did not corroborate the expenses listed in the per diem budgets or request any such supporting documentation. Thus, it has no way of knowing whether the RCRP vendors actually incurred the expenses listed in their per diem budgets.

Our initial review identified a possible overpayment to one RCRP vendor, Volunteers of America-Delaware Valley ("VOA"), for capital improvements to a contracted RCRP facility. Specifically, we found that VOA included in its 2004 per diem budget \$60,000 for "additional capital improvements to the facility." This expense was included in the calculation of VOA's per diem rate over all six years of its contract term, resulting in payments totaling \$360,000. Our review of supporting documentation of the expenditures related to these capital improvements provided by VOA identified only \$30,310 in capital improvement related expenditures. Therefore, it appears that there was an overpayment of approximately \$330,000 made to VOA for the capital improvements.

The operating lease for the contracted RCRP facility confirmed that VOA does not own the facility and instead an affiliated entity owns the facility and rents it to VOA. Moreover, according to the lease all changes or additions to the facility become the property of the landlord. We advised DOC that if it chooses to fund such capital improvements at private facilities, it should take steps to ensure that the state's interest in those facilities is adequately protected.

Following the issuance of our letter in June 2011, we sent a separate referral letter to DOC requesting it to address the apparent overpayment and the issues related to the leasing of VOA's RCRP facility.

Update:

DOC informed us that it determined that there is little basis in the contract documents to recover the potential overpayment to VOA once a per diem rate is set. As a result, DOC has not taken any steps to recover the apparent surplus payments made to VOA for capital improvements. In response to the June 2011 letter, DOC advised us that it would specify on the per diem budget sheets that "all capital costs must be amortized over the contract duration and reviewed to ensure that there are no one time [sic] costs included in the rate calculations." However, the per diem budget sheets in the 2013 RFP did not contain these instructions. We recommend that in future procurements, OCP specify that any capital costs are to be amortized over the contract term to avoid future overpayments for such expenses.

(3) ***Initial Findings:***

The RFPs in 2004 and 2010 permitted RCRP vendors to include "administrative costs" in their per diem budgets that are paid by DOC. The RFPs defined those costs as "any regional office/home office expenses which are allocable to the RCRP." We advised DOC that this vague definition risked vendors inflating these costs and that even without this expense category DOC's per diem budget sheets seemed to permit vendors to include all conceivable RCRP costs.

Update:

In response to our 2011 letter, DOC informed us that it would eliminate the "administrative costs" category from the per diem budget of future RFPs. While DOC did eliminate the specific line from the per diem budget sheet, we found that since the issuance of our 2011 letter, the vendors at 12 out of the 14 RCRP locations simply listed the administrative costs under "other expenses." We note that these costs were significant for some of the RCRP vendors. For example, the vendors at 9 out of the 14 RCRP locations included administrative costs that comprised more than 20% of their entire operating expenses.

DOC previously advised us in 2011 that it anticipated that vendors might just add these expenses to alternate budget lines, but apparently no action was taken to

prevent this from occurring. Moreover, OCP officials told us that they were not aware that almost all of the RCRP vendors awarded contracts following our 2011 letter separately included the administrative costs in their per diem budgets. Due to the lack of specificity in describing these administrative costs in the per diem budgets, we cannot determine what comprises these costs. As a matter of transparency, if DOC continues to permit vendors to separately include administrative costs, it should require vendors to itemize the specific expenses included within these costs.

(4) ***Initial Findings:***

DOC did not use submitted per diem rates as a factor in its vendor-selection process in the 2004 procurement. In 2010, OCP addressed this deficiency by considering proposed per diem rates in its vendor selection process, however, it did not attempt to negotiate any of the per diem rates submitted to it. We recommended that future RFPs for these services permit negotiation of cost since such negotiation would provide an opportunity to reduce agency expenditures.

Update:

The 2013 procurement included a provision implementing a Best and Final Offer (“BAFO”) component into the RFP. The BAFO gave DOC the opportunity to request vendors to submit a per diem rate lower than the initial proposed rate. As a result of the BAFO component, several of the RCRP vendors lowered their per diem rates. By following our recommendation and adding the BAFO to the 2013 procurement process, we estimate that DOC may reduce its RCRP expenses by as much as \$670,000 annually.

(5) ***Initial Findings:***

Our initial review found that one RCRP vendor’s contracted amount of beds increased in 2009 from 316 to 716 without any explanation or any institutional need for the 400 additional beds. Consequently, we advised DOC that from a procurement perspective, the awarding of the additional beds was inconsistent with DOC’s initial competitive selection process as well as notions of transparency in government contracting.

Update:

OCP's Director informed us that there were no additional beds awarded following the 2013 procurement.

(6) ***Initial Findings:***

Pursuant to N.J.S.A. 30:4-91.12, RCRP vendors are required to establish community relations advisory boards ("Advisory Boards"). Our initial review found that one of the RCRP vendors listed two OCP staff members on its Advisory Board in its 2010 RCRP proposal. The OCP staff members subsequently informed us that this was a mistake and that they declined participation on the vendor's Advisory Board. Had these staff members actually participated on the Advisory Board, they may have violated the New Jersey Uniform Ethics Code. As a result, we suggested that for future procurements the evaluation committee should not be permitted to see the names of Advisory Board members and that OCP adopt a policy excluding OCP staff specifically from these boards.

Update:

The 2013 RFP did not require the vendors to list the members of its Advisory Board and specifically precluded OCP staff and staff from DOC's Division of Administration from participating on the Advisory Boards. According to OCP, this restriction was followed.

(7) ***Initial Findings:***

Our initial review raised questions as to a particular RCRP vendor's eligibility to provide RCRP services for DOC due to its subcontracting arrangement with a for-profit company. In 1976, the statutory definition of "facility" was expanded to include "private nonprofit community-based residential treatment centers which provide for the care, custody, subsistence, education, training and welfare of inmates." N.J.S.A. 30:4-91.2 (emphasis added). Attorney General Opinion 86-0155, issued on March 12, 1987, interpreted N.J.S.A. 30:4-91.2 and concluded that it was "clear that the Legislature contemplated and authorized a delegation of correctional responsibilities and authority to a private entity only in the context of a non-profit 'facility.'" Based on these two legal sources, our 2011 letter cited the

Gary M. Lanigan, Commissioner
Marcus O. Hicks, Director
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fact that DOC does not have legal authority to contract for RCRP services with for-profit entities.

We recommended that OCP seek formal and updated legal guidance from the Attorney General's Office (the "AG") on this issue. We further advised OCP that in the event that the AG finds that subcontracting arrangements between non-profit entities and for-profit entities for all RCRP services are permitted under N.J.S.A. 30:4-91.2, that this be made clear in RFPs issued in connection with future RCRP procurements so that other potential vendors are aware that such arrangements are permissible.

Update:

DOC obtained an updated AG opinion that sets forth the ability of non-profit entities to subcontract with for-profit entities for RCRP services. In addition, the 2013 RFP stated that non-profit entities are permitted to contract with for-profit entities for RCRP services.

If you have any questions, please do not hesitate to contact me at (609) 984-2888. Thank you for your attention to these matters.

Very truly yours,



Karen H. Shelton
Director, Procurement Division