AUDITING/ACCOUNTING

FISCAL CONDUIT POLICY

DDS ADVISORY PROHIBITING THE USE OF "FISCAL CONDUITS"

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Past audits conducted by the Office of the State Auditor of actions of the Department of Developmental Services have noted certain activities involving purchase-of-service ("POS") contracts in the MM Subsidiary that have been classified as "fiscal conduit" situations. The Operational Services Division, which is statutorily responsible for issuing guidance on POS contracting matters, has indicated that it is their policy to interpret the provisions of M.G.L. Chapter 29, Section 29B to prohibit the use of contracts for any contracting or purchasing activities (regardless of object class/object code) that constitute "fiscal conduits." In defining these activities, OSD has adopted as a framework its former regulation at 808 CMR 2.03(6), which is set forth below:

> Fiscal Conduits Prohibited. No procuring Department shall award a Contract:
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> (a) to acquire any goods for the Procuring Department's use;
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> (b) to defray the expenses of services rendered by individuals hired or supervised in the daily performance of their work by personnel in the classified service of the Commonwealth; or
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> (c) solely to acquire payroll or fiscal management for a Program of Client services operated by the Commonwealth or any third party.

This definition builds upon the Chapter 29, Section 29B language that states that "…contracts shall not be…used by any department…to procure any goods or services not required in the direct provision by the contractor of social, rehabilitative, health, or special education services…"

Questionable Practices

Past audits have highlighted questionable practices, some of which are outlined below:

- Situations in which contracts are used to purchase goods, services, or other non-direct care related items for state employees, state agencies and/or other provider agencies. An example of this would be purchasing training services for state staff through a provider service contract.
- Situations in which POS contracts are used as "pass-throughs" to direct funds to other organizations, i.e. using one provider to pay a bill for services rendered by another, for services unrelated to the primary provider's program activities.

These practices, insofar as the services provided do not relate to the direct provision of services by the primary contractor, constitute classic "fiscal conduits" and represent prohibited activities.

It is important to note that appropriate alternatives to fiscal conduits are generally available to meet the underlying needs that the situations bulleted above illustrate. In some cases, the proper use of subcontracts can suffice to address the issues while, in other cases, purchasing from alternate subsidiaries/object codes is required. Although it may be the case that these alternatives are more time-consuming and procedurally challenging, it is critical that Department managers avoid using fiscal conduits and choose the proper purchasing approach. In cases in which managers are uncertain about how best to address a given circumstance or whether a particular situation constitutes a fiscal conduit, they should contact their relevant Regional Director or Dana Roszkiewicz or Sandy Shepard in the Contracts Office for further discussion.

The Operational Services Division has indicated, in its guidance materials regarding fiscal conduits, that internal controls must be in place at all Departmental levels to make certain that all contracting personnel are fully aware of the potential consequences associated with this prohibited fiscal conduit activity. They have determined that the provisions of MGL Chapter 266, Sec. 67A apply in the case of fiscal conduits. This statute establishes serious **criminal** penalties in cases in which state agency staff involved in the procurement of supplies or services intentionally make false or misleading statements