



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued November 12, 2021

Independent State Auditor's Determination on the Human Resources Division's Proposal to Privatize Its Leave Administration and Absence Management Functions for Executive Branch Agencies





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Making government work better

November 12, 2021

Mr. Jeff McCue, Assistant Secretary / Chief Human Resources Officer
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Dear Mr. McCue:

I am pleased to provide this review of the Human Resources Division's proposal to privatize the administration of its leave administration and absence management functions for the Commonwealth's executive branch. This report details our objective, scope, and methodology, as well as our determination based on our review. My audit staff discussed the contents of this report with management at the Human Resources Division.

This office has determined that the Human Resources Division has complied with all provisions of Section 54 of Chapter 7 of the Massachusetts General Laws and all other applicable laws; therefore, this office has no objection to the Human Resources Division's request to privatize the administration of its leave administration and absence management functions.

I would also like to express my appreciation to the Human Resources Division for the cooperation and assistance provided to my staff during our review.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular background.

Suzanne M. Bump
Auditor of the Commonwealth

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EXECUTIVE SUMMARY

Sections 52 through 55 of Chapter 7 of the Massachusetts General Laws, the Commonwealth's Privatization Law, outline the process that must be followed by agencies and applicable authorities seeking to contract for a service that is currently performed by state or authority employees. The law, which became effective December 15, 1993, applies to contracts that have an aggregate value of \$603,833 or more.¹

Pursuant to this law, agencies or authorities considering privatizing services that are currently performed by state employees must first follow a specific process to demonstrate and certify to the State Auditor that (1) the agency or authority—in this case, the Human Resources Division (HRD)—has complied with all provisions of Section 54 of Chapter 7 of the General Laws and all other applicable laws; (2) the quality of the services to be provided by the designated bidder is likely to satisfy the quality requirements of the written statement of services and equal or exceed the quality of services that could be provided by state employees; (3) the total cost to perform the services by contract will be less than the estimated in-house cost; (4) the designated bidder has no adjudicated record of substantial or repeated noncompliance with relevant federal and state statutes; and (5) the proposed privatization contract is in the public interest in that it meets applicable quality and fiscal standards. The State Auditor has 30 business days (with the authority to extend the review an additional 30 business days) to approve or reject the certification.

The specific process that agencies or authorities must follow includes preparing a detailed written statement of services, estimating the most cost-efficient method of providing those services with state employees, selecting a contractor through a competitive bidding process, and comparing the in-house cost to the cost of contract performance. They must also ensure that the private bids and private contract, if ultimately awarded, contain certain provisions regarding wages, health insurance, hiring of qualified state employees, nondiscrimination, and affirmative action.²

HRD was established under Section 4A of Chapter 7 of the General Laws, as amended by Section 23 of Chapter 46 of the Acts of 2015. HRD is a division of the Executive Office for Administration and Finance

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1. Pursuant to Section 53 of Chapter 7 of the General Laws, the threshold, which was set at \$500,000 in 2009, is adjusted as of January 1 each year according to the Consumer Price Index as calculated by the United States Bureau of Labor Statistics.
 2. Pursuant to Section 54 of Chapter 7 of the General Laws, every private contract must contain provisions requiring the contractor to comply with a policy of nondiscrimination and equal opportunity for all persons protected by law. The contractor must also take affirmative steps to provide this equal opportunity.

that provides human resource services to the Commonwealth's executive branch and is its central personnel department. In addition, HRD administers the Commonwealth's civil service system for state agencies and many local governments. HRD's website states,

We provide support and administer human resource programs and services to current and prospective state employees, agency business partners and select municipal employees.

Our programs and services include:

- *Recruiting new employees*
- *Delivering learning and development opportunities for existing employees*
- *Administering [human resources, or HR] policy, employee benefits, and compensation*
- *Offering employee self-service HR related support*
- *Administration of collective bargaining agreements and contracts*
- *Ensuring an inclusive, safe and productive workplace*
- *Administering examinations for public safety and promotional opportunities*

HRD is proposing to privatize the administration of its leave administration and absence management functions for its 44,000 executive branch employees. The executive branch consists of nine secretariats and more than 100 departments and agencies. HRD currently oversees leave administration and absence management in a decentralized manner; secretariats and agencies are able to implement their own leave administration and absence management policies and processes. HRD is seeking a vendor to centrally manage employee absences, including leave that is governed by federal and state laws, as stated in its request for response (RFR) for this work. According to the RFR, the vendor's scope of work will include four primary areas:

- A. ***Intake and Approval***—receiving real-time calls and contacts from employees seeking to be absent from their jobs, validating necessary information and documentation, approving or denying request based serious health condition and job functions, notifying the employee and appropriate managers and supervisors in a timely fashion, and maintaining accurate records. . . .
- B. ***Case Management***—coordinating benefits between those provided by the Commonwealth and those provided by an outside entity (e.g., accrued leave time balances versus PFML benefit, performing post-intake follow-up investigation (e.g., incomplete medical certification), documentation and reporting for all absences to verify validity, appropriately categorizing the absence, and updating employee information. This includes escalation to the Commonwealth when appropriate.

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- C. **Program Integrity**—*providing subject matter expertise on the administration of leave benefits based on existing Federal and State laws and regulations, providing tools to monitor the program integrity, at the individual and aggregate levels, against established processes and policies. Such tools would be inclusive of auditing procedures, compliance reviews, and other industry techniques to identify and address any vulnerabilities in the integrity of the program.*
- D. **Reporting and Data System Integration**—*leveraging its own technology system for leave tracking to document and report on all leave details, including but not limited to leave type, reason, and duration, payment mechanism, and anticipated return.*

On August 19, 2021, HRD notified the Office of the State Auditor (OSA) of its intent to privatize its leave administration and absence management functions. As required by law, the notification was accompanied by a certification signed by HRD's chief human resources officer and the secretary of the Executive Office for Administration and Finance and by documentation subject to review by OSA in accordance with state law and with applicable guidelines issued by OSA. This notification began the 30 business days in which OSA must either approve or reject this privatization proposal. On September 15, 2021, OSA notified HRD of its decision to extend the deadline for an additional 30 business days, until November 16, 2021.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of our review was to determine whether the Human Resources Division (HRD) complied with Sections 52 through 55 of Chapter 7 of the Massachusetts General Laws (the Privatization Law), including the law's quality requirements, and whether the cost of having a vendor perform leave administration and absence management services would be less than the estimated cost of performing them in house with current employees.

To meet these objectives, the Office of the State Auditor (OSA) examined the request for response (RFR) and the corresponding responses; reviewed the proposed operating agreement between HRD and the designated bidder, Workpartners; evaluated other related documentation; and held discussions with HRD management as well as management from other organizations regarding the type, scope, and quality of services to be provided by Workpartners.

OSA also evaluated the validity of the cost analysis³ provided by HRD as well as other documentation⁴ prepared by HRD management that supported the privatization proposal. In addition, OSA compared the anticipated costs according to the proposed Workpartners contract to the projected costs of performing the services in house to ensure that the proposed privatization would result in savings to the Commonwealth. OSA cross-referenced expenses to supporting documentation; this included independently verifying fringe benefit rates from the Office of the Comptroller of the Commonwealth.

Additionally, OSA examined how HRD would monitor the quality of contract performance by reviewing the RFR as well as Workpartners' response and was able to verify that HRD would monitor contract effectiveness through service level agreements and performance guarantees. Vendor performance will be evaluated on the following areas: (1) claim management performance, including a reduction of unauthorized absences; (2) account management; (3) customer service metrics; and (4) internal audits. HRD has negotiated financial incentives and penalties regarding Workpartners' ability to meet the minimum required contractual performance measures.

Workpartners demonstrated its leave management system for OSA. We also surveyed two organizations that use Workpartners for similar leave administration and absence management functions. These

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3. The cost analysis documentation that HRD provided to OSA includes, but is not limited to, in-house cost forms, personnel cost worksheets, cost form supporting details, and related notes.
 4. This documentation includes, but is not limited to, a summary of the submitted bids, the bid criteria rating system and scoring matrix, the proposed statement of work with Workpartners, and certificates of compliance.

actions gave OSA significant insight into Workpartners' day-to-day operations and how it provides services to each of the two organizations.

DETERMINATION

Based on our review, we have concluded that the Human Resources Division (HRD) has complied with the specific requirements of Sections 52 through 55 of Chapter 7 of the Massachusetts General Laws (the Privatization Law) in reaching its decision to privatize the administration of its leave administration and absence management functions, which are currently performed in house with state employees.

HRD has certified and demonstrated to the Office of the State Auditor (OSA) that the quality of the services to be provided by Workpartners will equal or exceed the quality of services that would be provided by state employees, that the contract cost of managing the services will be less than the estimated cost for performing them in house with state employees, that Workpartners has no adjudicated record of substantial or repeated noncompliance with relevant federal and state statutes, and that the proposed privatization contract is in the public interest in that it meets applicable quality and fiscal standards. We therefore approve HRD's certification in each of those required areas.

We reviewed HRD's compliance with the statutory provisions of the Privatization Law and have concluded that HRD has complied with all provisions of the Privatization Law:

1. HRD issued a request for response (RFR) on September 2, 2020, with an initial response due date of October 30, 2020, for its leave administration and absence management services. In response to the RFR, four potential providers submitted bids for review. Workpartners' bid was selected. The terms of the proposed contract will not exceed five years.
2. For each position in which Workpartners will employ any person pursuant to the privatization contract and for which the duties are substantially similar to those performed by a state employee, HRD's statement of services includes a statement of the appropriate minimum wage rate⁵ to be paid for that position. Workpartners' bid and the proposed privatization contract include provisions specifically establishing the wage rate for each such position, which is not less than the appropriate minimum wage rate. Additionally, Workpartners' bid and the proposed contract include provisions for Workpartners to pay no less than a percentage, comparable to the percentage paid by the Commonwealth for state employees, of the costs of health insurance plans for every employee employed for more than 20 hours per week. Moreover, the proposed contract includes a provision requiring that Workpartners' health insurance plan also provide coverage to every employee's spouse and dependent children. It also requires Workpartners to submit quarterly payroll records to HRD, listing the name, address, Social Security number, hours worked, and hourly wage paid for each employee in the previous quarter.

5. The minimum wage rate will be the lesser of (1) step one of the grade under which the comparable regular state employee is paid or (2) the average private sector wage, as determined by the Executive Office for Administration and Finance.

3. The proposed contract between HRD and Workpartners contains a provision requiring Workpartners to offer available positions to qualified state employees whose state employment is terminated because of the privatization contract and who satisfy Workpartners' hiring criteria. The proposed contract also contains a provision requiring Workpartners to comply with equal opportunity and affirmative action laws as required by the Fair Labor Standards Act, by Sections 52 through 55 of Chapter 7 of the General Laws, and by all other regulations required by federal and state laws.
4. HRD prepared a comprehensive written estimate of the costs for state employees to perform leave administration and absence management services in the most cost-efficient manner. This cost estimate includes all direct and indirect costs of state employees, including, but not limited to, personnel costs and other employee benefit costs.
5. Prior to the issuance of the RFR, HRD notified and communicated with the National Association of Government Employees (NAGE), the relevant employee organization, about its intent to privatize its leave administration and absence management services to a third party. HRD communicated with NAGE and provided it with adequate resources to support and encourage the submission of a bid. Ultimately, NAGE decided not to submit a bid.
6. After soliciting and receiving bids, HRD publicly designated Workpartners as the bidder to which the contract would be awarded.
7. HRD's chief human resources officer and the Executive Office for Administration and Finance provided a certification of compliance with the following requirements detailed in Section 54(7) of Chapter 7 of the General Laws:
 - a. HRD complied with all the provisions of Section 54 and all other applicable laws.
 - b. The quality of the services to be provided by Workpartners is likely to satisfy the quality requirements of the statement of services and to equal or exceed the quality of services that could be provided by agency employees.
 - c. The contract cost will be less than the estimated cost of regular state employees providing the services, taking into account all comparable types of costs.
 - d. Workpartners and its supervisory employees while in its employ have no adjudicated record of substantial or repeated willful noncompliance with any relevant federal or state regulatory statutes, including, but not limited to, statutes concerning labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection, and conflicts of interest.
 - e. The proposed privatization contract is in the public interest in that it meets the applicable quality and fiscal standards.

Regarding the fiscal standards, OSA's financial analysis, as set forth in the appendices to this determination, demonstrates that over a three-year period, the cost of HRD's leave administration and absence management services would be approximately \$23,634,340 if operated in house with state

employees, whereas the proposed contract with Workpartners would cost an estimated \$12,813,184. Thus the privatization of HRD's leave administration and absence management functions would provide HRD with a cost savings of \$10,821,156, a 46% reduction.

For all these reasons, OSA has determined that HRD has complied with all provisions of the Privatization Law and all other applicable laws; therefore, this office has no objection to HRD's request to privatize its leave administration and absence management functions.

APPENDIX A

Cost Comparison for Three-Year Period

Human Resources Division Cost Comparison Form	
In-House Cost Estimate (<u>Appendix B</u>)	\$ 23,634,340
Less Contract Performance Costs (<u>Appendix C</u>)	12,813,184
Cost Savings	<u>\$ 10,821,156</u>

APPENDIX B

In-House Cost Estimate for Three-Year Period

Human Resources Division In-House Cost Estimate*	
Direct Costs	
Personnel	\$ 16,124,700
Materials and Supplies	69,339
Other†	7,440,301
Total In-House Costs‡	<u>\$ 23,634,340</u>

* Leave administration and absence management functions are currently decentralized and administered at the agency level. The Human Resources Division's in-house cost estimate is a calculation of what it would cost to provide centralized leave administration and absence management functions across the Commonwealth's executive branch.

† Other direct costs include payroll taxes, rent, a leave management system, and information technology hardware expenditures.

‡ For the purposes of the privatization cost review, only direct costs were included. Indirect costs are overhead costs that the Commonwealth incurs regardless of the leave administration and absence management functions in the proposed contract, so they are excluded from the cost-savings calculation.

APPENDIX C

Workpartners Contract Performance Costs for Three-Year Period

	Workpartners Proposal
Contract Price	\$ 11,721,600
Contract Administration	1,071,584
Transition Costs	20,000
Unemployment Benefits	0
Retirement Benefits	0
Other	20,000
Gain or Loss on Disposal of Assets	0
Other Revenue (Deduction)	0
Savings (Deduction)	0
Lost Tax Revenue	0
State Income Tax (Deduction)	0
Total Contract Costs	<u>\$ 12,813,184</u>