



STATE OF NORTH CAROLINA  
Office of the State Auditor

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State Auditor

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July 1, 2005

Ms. Carmen Hooker Odom, Secretary  
North Carolina Department of Health and Human Services  
Adams Building  
101 Blair Drive  
Raleigh, N. C. 27699-2001

Dear Secretary Odom:

We received an allegation through the *State Auditor's Hotline* that employees of the Department of Health and Human Services accepted a dinner at Sullivan's restaurant in Raleigh from a computer services vendor in violation of state and departmental policies.

We have completed a special review of this allegation. The following findings and recommendations are based on interviews of department personnel, examination of relevant contracts, and review of applicable state and departmental regulations.

### **Background**

On July 2, 2001, the Office of Information Technology Services (ITS) issued a Request for Proposal (RFP) for Distributed Computing Services (Seat Management Services). Proposals were received from four vendors who were later "qualified" by the IT Procurement Office to provide seat management services to *any* state agency. The four vendors were ACS, OAO, Dyncorp and IBM. The proposals submitted to the IT procurement office included the names of subcontractors that could be used to perform contract services for the vendors.

Once the vendors were qualified, each state agency could contact those vendors and request proposals for services specific to its department. The Department of Health and Human Services made a request to the vendors to prepare proposals specific to its needs. Due to a change in management, the vendors were asked to present their information a second time. After the second presentation, the seat management project team, which consisted of the Director of the department's Division of Information Resource Management (DIRM), the Computer/Telecomm Services Manager for DIRM and several others within the agency, made a recommendation to the Deputy Secretary to choose ACS. A project team member indicated that the vendors did not reveal their subcontractors during their presentations.

Ms. Carmen Hooker Odom, Secretary  
July 1, 2005  
Page 2

ACS was notified on December 16, 2002, that it had been selected as the contractor. DIRM management later learned that Alphanumeric would be acting as a subcontractor for ACS to help meet the requirements of the contract. The Deputy Secretary signed the delivery order for services on May 5, 2003, for contract services through May 4, 2007.

### **Substantiation of Allegation**

Interviews with the Deputy Secretary and with the Computer/Telecom Services Manager for DIRM substantiated that the President of Alphanumeric, the Deputy Secretary, the Director of DIRM and the Computer/Telecom Services Manager had dinner at Sullivan's restaurant on March 20, 2003. The President of Alphanumeric paid for the dinner according to the participants. The participants described the dinner as a "meet and greet" session so that all parties involved with the seat management contract could become more familiar with each other.

### **North Carolina Board of Ethics – Executive Order Number One**

The Deputy Secretary is covered under Executive Order Number One, which outlines rules of conduct for public officials including conflicts of interest. Section 7a of the Order notes, "A public official shall not knowingly use his position in any manner which will result in financial benefit..." A review of the information does not indicate that the Deputy Secretary used his position to get a free meal from the subcontractor. Also, it does not appear that a free meal, even at an elaborate restaurant would meet the definition of "financial benefit" as noted in the section. Therefore, the event does not appear to violate Section 7a.

However, section 7b addresses the "appearance of conflict." It states "An appearance of conflict exists when a reasonable person would conclude from the circumstances that the Public Official's ability to protect the public interest, or perform public duties, is compromised by familial, personal or financial interests." In our opinion, the event described above did create an "appearance of conflict" as described in Section 7b of Executive Order Number One and therefore should have been avoided.

### **North Carolina General Statutes and Department Policies and Procedures**

*N.C.G.S. § 133-32* prohibits contractors, subcontractors or suppliers from providing gifts or favors to government employees. It is also unlawful for government employees to accept such gifts and favors according to this statute. Section IV of *Department of Health and Human Services (DHHS) Internal Policies and Procedures* also prohibits employees from receiving gifts

Ms. Carmen Hooker Odom, Secretary  
July 1, 2005  
Page 3

or favors from contractors. As stated in this policy, “*no DHHS employee (or family member) may request or receive any gift or favor from any contractor, subcontractor, supplier or other business entity or individual that has a present, past, or anticipated financial interest in any matter under the jurisdiction of DHHS.*” This policy defines “**gift**” as “**anything of value.**” Alphanumeric has been a past contractor of services for the department, is a principal subcontractor to an agency contract, and is a potential future contractor. Therefore, the meal provided by Alphanumeric to agency employees appears to violate state law as well as department policy.

### **Recommendations**

Department management should ensure that employees understand and comply with the provisions outlined in the *North Carolina Board of Ethics – Executive Order Number One*, N.C.G.S. §133-32, and Section IV of *DHHS Policies and Procedures (Ethical Conduct)* to avoid appearances of conflict and future violations of these regulations.

General Statute§147-64.6(c)(12) requires the State Auditor to provide the Governor, the Attorney General, and other appropriate officials with written notice or apparent instances of violations of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee. In accordance with that mandate, and our standard operating practice, we are providing copies of this management letter to the Governor, the Attorney General and other appropriate officials.

If you have any questions or wish to discuss this matter further, please contact us. We appreciate the cooperation received from your staff during our review.

Sincerely,



Leslie W. Merritt, Jr., CPA, CFP  
State Auditor

**Management letters and responses receive the same distribution as audit reports.**



**North Carolina Department of Health and Human Services**

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Michael F. Easley, Governor

Carmen Hooker Odom, Secretary

June 22, 2005

Honorable Leslie Merritt, Jr., CPA, CFE  
Office of the State Auditor  
2 S. Salisbury Street  
20601 Mail Service Center  
Raleigh, NC 27699-0601

Dear Mr. Merritt:

Thank you for your letter dated May 31, 2005 regarding an allegation made through the State Auditor's Hotline. The specific allegation was that several DHHS employees attended a dinner provided by a subcontractor of a department vendor. As indicated in your investigation, the dinner did in fact take place and was described as a "meet and greet" session so that all parties involved in the awarded contract could meet to become more familiar with each other.

We agree with the conclusions in your letter that this isolated meal does not give rise to a financial benefit to the State employees; however, it could be considered as a gift or favor which is prohibited by both State and Department policy. We are in the process of reiterating DHHS policy to all of our managers/employees that are involved in the contractual process of RFP, bid evaluations, awards and administration. We are planning to have each of these individuals certify that they have received a copy of the Department's policy on gifts and favors. The certification will then be placed in the employee's personnel file.

We believe that the planned action will strengthen our organization by raising employee awareness of the policy prohibiting the acceptance of gifts/favors and avoiding even the appearance of a conflict of interest. This educational process should minimize future occurrences of non-compliance with State law and policy due to ignorance of the law.

If you have any questions regarding our planned corrective actions, please contact Dan Stewart at 733-4534.

Sincerely,

A handwritten signature in black ink that reads "Carmen Hooker Odom".

Carmen Hooker Odom

Cc: Dan Stewart, CPA  
Allyn Guffey, CPA  
Jackie Sheppard

