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| LOCAL COMMISSIONERS MEMORANDUM |
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DSS-4037EL (Rev. 9/89)

Transmittal No: 95 LCM-117

Date: October 16, 1995

Division: MSQI

TO: Local District Commissioners

SUBJECT: Consultant Contracts for Federal Revenue Maximization

ATTACHMENTS: None

We have received several inquiries from local districts about the feasibility of entering into a contract for consulting services in an effort to maximize Federal funding of county operations by identifying areas of current expenditure which are eligible for Federal Financial Participation. Also, the Department has recently awarded contracts to two entities, the New York State Association of Counties (NYSAC) and Health Management Systems for Federal maximization efforts. These contracts include projects intended to secure Emergency Assistance for Families (EAF) funds for activities performed by such county agencies as the local Probation Department and the county Office of Mental Hygiene. The purpose of this memorandum is to explain the claiming process and reimbursement policies covering the costs of such a contract.

Applicability

The Federal maximization efforts addressed in this LCM focus on costs never reimbursed previously under Titles IVA, IVE, or XIX of the Social Security Act. The instructions in this LCM apply whether these initiatives are County contracted, State contracted or local district initiated and regardless of whether State share reimbursement is or has been claimed from the Department.

Reimbursement of County Consulting Costs

Under Federal rules, OMB Circular A-87 designates general cost principles for determining the allowability of administrative costs for Federal funding. The A-87 Circular stipulates that personal service contracts are unallowable if the services rendered are contingent upon recovery of the costs from the Federal Government. Consequently, any consultant contract fees constructed on a contingency structure would not be eligible for Federal participation.

Should a contract be negotiated where the consultant services were not being paid through contingency fees, then Federal rules would have to be met regarding contract procurement to obtain Federal participation. Those regulations are found in 45 CFR 92.36. In such situations, the costs would be claimed under the Federal programs that benefit from such services.

For State reimbursement to be available, the contract would have to be procured in accordance with the requirements of Section 103 of General Municipal Law.

State reimbursement is ordinarily not available for any costs where the local's failure to follow Federal requirements resulted in a loss of Federal participation. However, 18 NYCRR 600.3 permits State reimbursement in certain circumstances including those wherein the federal policy is not concurred in by the Department. The Department does not concur in the federal policy of disallowing expenditures contingent on federal revenue.

Federal reimbursement for any claims resulting from implementation of the contractor's recommendations would have to be supported by a cooperative agreement or purchase of services agreement between your agency and any other local governmental agency that is directly incurring the costs being claimed.

New York State Contract

Any questions regarding the use of the State contractors may be directed to John Murray in the Office of Quality Assurance and Audit at 1-800-383-8859, extension 3-0653. Please be aware a local district will be charged back its appropriate share of costs paid to a contractor, which are contingency fee based, when the county participates in federal reimbursement generated by the contractor. Claims must be submitted on the DSS-3922 as described below and directed to John Murray, Office of Quality Assurance and Audit. In the upper right hand corner of the claim the words "State Contract" should appear.

County Contract

As a result of Counties directly contracting with NYSAC, a Memorandum of Understanding has been executed at the State level with NYSAC to ensure these initiatives are properly monitored and controlled. However, Counties contracting directly with NYSAC are responsible for paying the contractor. Any questions concerning County contracts should be directed to John Murray, Office of Quality Assurance and Audit. Claims must be submitted on the DSS-3922 as described below and directed to John Murray, Office of Quality Assurance and Audit. In the upper right hand corner of the claim the words "County Contract" should appear.

State reimbursement of a portion of these costs may be available under the terms of the State's MOU, provided that such claims are submitted in accordance with the procedures established herein. Such costs would be included in the administrative cost exempt area plan.

County Initiatives

Any Counties filing claims pursuant to their own initiatives must also submit the DSS-3922 and forward them to John Murray, Office of Quality Assurance and Audit. In the upper right hand corner of the claim the words "County Initiated" should appear.

Claiming Process

Given the above initiatives as well as existing revenue initiatives, it is critical that the claiming process be controlled centrally, that claims are not duplicated, and that Federal claims are properly monitored.

Generally, claims to the Federal government for local district expenditures currently flow through two avenues: 1) local district claims submissions and, 2) Office of Quality Assurance and Audit initiatives (e.g., Medicaid Federal Non-Participating expenditures reclassified to Federal Participation, MA disproportionate share).

The Office of Quality Assurance and Audit (QA&A) has been assigned the responsibility to control claims filed for Federal Financial Participation related to either of these two initiatives or any new initiatives being undertaken solely by local districts at their own initiative, i.e., no contractor is being used.

Any claims resulting from the local district contractor's recommendations or local district new initiatives have to be submitted separately from your regular monthly claims. Please use the DSS 3922 "Financial Summary For Special Projects" form for such claims with an explanation of the costs being claimed. Each project must be clearly explained with a cover letter and a separate DSS-3922. The cover letter should indicate whether the initiative is County initiated, NYSAC thru County contract or State initiated contract, the initiative being claimed, and the Federal program funding is being requested for. The DSS-3922 should be clearly labeled, as well.

Claims for services not previously funded via State DSS should appear on the DSS-3922 as gross expenditures with the appropriate Federal share noted. Please use line 11, placing gross expenditures in the Total column and the Federal share in the respective column. It is important to note that the certification must be completed. The instructions for completion of the DSS-3922 found in the Fiscal Reference Manual do not apply in this instance. Eligible costs would include salary, fringe benefits, non-salary and an applicable proportion of overhead.

Federal funds will only be paid once Federal funds are actually received and claims are determined to be fully allowable.

Once Federal funds are paid, should funds later be disallowed and require being refunded, locals will be fiscally responsible.

The claims which are being submitted on behalf of social services districts, both by the Department to the federal government and by contractors to the Department, are being submitted pursuant to Sections 131-g and 153-b of the Social Services Law and accordingly, are not eligible for State reimbursement from this department since State reimbursement flowed from other State agencies.

Any claims filed as a result of the above initiatives must follow the process outlined above. If districts have already filed claims, reversing claims must be completed and the claims refiled in accordance with the instructions outlined in this LCM.

Fees

Since local district contractors and New York State contractors are being paid on a contingency fee basis, controlling claims submissions through QA&A will help to identify fee payment responsibility. Local districts that contract on their own will be responsible for paying the fee, while the State will pay the fee to its contractors, subject in both cases to the reimbursement described above.

Payment Process

If Federal funds are received and the retention of funding is certain, the Department will pay the Federal share to the County in the normal manner. The respective County entities must then deal directly with the State Agency, e.g., Probation originally funding the service with State and/or local funds is now being partially funded with Federal funds. Local agencies must refund appropriate share to the State so that the respective State agency gets its share of the Federal funds.

Eligibility and Claims Documentation

Regardless of what processes are used for claiming Federal participation, eligibility criteria for the appropriate program area must be met and claims properly documented so that Federal scrutiny of claims will not result in claim denials for lack of proper documentation.

Block Grant Implications

Several districts asked whether the State share of any claims for Services expenditures submitted based on the recommendations from such consulting firms would be applied against the district's State Services Block Grant. Costs will not be applied to the State Services Block Grant as long as those costs pertain to activities that were not included previously in the base of the State Block Grant and that the claiming procedures outlined in this letter have been followed.

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If you have any questions regarding this memorandum, please contact the Bureau of Local Financial Operations.

Regions 1-4 - Roland Levie at 1-800-383-8859, extension 4-7549, or dial direct at (518) 474-7549. User Id # FMS001.

Region 5 - Marvin Gold at (212) 383-1733. User Id # OFM270.

Stephanie O'Connell
Acting Director
Office of Financial Management