

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY



July 21, 2014

Tim Townsend, Trial Court Administrator
State Trial Courts
Metro Courthouse
1 Public Square
Nashville, TN 37201

Dear Mr. Townsend:

Please find attached the final Monitoring Report on the federal and state grants and other financial assistance administered by State Trial Courts for the fiscal year 2013. Staff from the Office of Financial Accountability began the fieldwork for this review on May 7, 2014. You previously reviewed and responded to findings in the preliminary report issued on July 11, 2014. Your responses have been incorporated into this final report.

We appreciate the assistance provided by your department during the course of the review. If you have any questions, please call me at 615-880-1035.

Sincerely,

Fred Adom

Fred Adom, CPA
Director

cc: Joe Werner, State Trial Courts
Theresa Palmer, State Trial Courts
Richard M. Riebeling, Director of Finance
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Metropolitan Government of Nashville and Davidson County

STATE TRIAL COURTS

◆ Monitoring Report ◆

Conducted by



Office of Financial Accountability

July 21, 2014

MONITORING REPORT

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INTRODUCTION

The Office of Financial Accountability (hereinafter referred to as “OFA”) has completed a monitoring review of the federal and state grants administered by the State Trial Courts. The monitoring process included a review of the contract in effect during the fiscal year ending June 30, 2013. The contracts reviewed are listed in Appendix A. The OFA conducted the monitoring review along the major compliance areas identified in the Office of Management and Budget (OMB) Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations.” and in compliance with the OMB Circular A-87, “Cost Principles for State, Local and Indian Tribal Governments.”

About the State Trial Courts

The mission of the State Trial Courts (hereinafter referred to as “STC”) is to provide the public with equal and fair access to the judicial branch of government by providing a fair, independent and accessible forum for the just, timely and economical resolution of their legal affairs. The courts making up the department include six Criminal Courts, Eight Circuit Courts, four Chancery Courts, and the State Trial Court Administrator’s office. The STC’s core services focus on civil, rather than criminal matters. The STC offers treatment, probation and supervision programs for non-violent felons funded by a grant from the Tennessee Department of Corrections, provides forensic drug testing, manages all jury-related activities, and oversees administrative functions. In addition, the State Trial Courts manages the Davidson County Drug Court for which provides an intensive alcohol and drug Program funded primarily by grants from the U.S. Department of Justice and the Tennessee Department of Mental Health and Substance Abuse Services.

Grants Reviewed:

Criminal Justice Residential Drug Court Treatment II-13

The State Trial Courts was awarded \$900,000 from the Tennessee Department of F&A to pay for the salary and benefits of six employees of the Davidson County Drug Court. The employees were to assist in treating participants of the Drug Court that have alcohol and drug addictions.

Video Conferencing Traversal Solution 13

The State Trial Courts was awarded \$40,000 from the Tennessee Administrative Office of the Courts to be utilized to install video conferencing traversal solutions. The system will connect the Trail Courts to the State, the Prisons, and other Metro Facilities.

INTRODUCTION

Residential Drug Court Treatment 13

The State Trial Courts was awarded \$450,000 from the Tennessee Department of Mental Health and Substance Abuse Services to pay for the salary and benefits of six employees of the Davidson County Drug Court. This grant replaced the final year of the Criminal Justice Residential Drug Court Treatment 11-13 from the Tennessee Department of F&A after it was terminated after one year in order to transfer the program to the Tennessee Department of Mental Health and Substance Abuse Services.

Court Interpreter Endowment 13

The State Trial Courts was awarded \$67,000 from the Tennessee Administrative Office of the Courts to help with cost of interpreter services for defendants with limited English proficiency who have been found to be indigent and who are involved in a proceeding which he or she has a statutory or constitutional right to appointed council.

Community Corrections 10-13

The State Trial Courts was awarded \$4,295,480.75 from the Tennessee Board of Probation and Parole. The grant is for the Davidson County Community Corrections Program that is designed to divert felony offenders from the Tennessee prisons system by providing community supervision and treatment services. The program goal is to reduce recidivism rates among felony offenders while maintaining the safety of the community.

Drug Court (TDOC) 11-16

The State Trial Courts was awarded \$4,910,000 from the Tennessee Department of Corrections to be utilized by the Davidson County Drug Court for the expenses of housing and treating non-violent felony offenders, including methamphetamine offenders from across the State and other offenders with co-occurring addiction and mental health disorders.

State JAG Residential Drug Court 12-13

The State Trial Courts was awarded \$50,000 from the U.S. Department of Justice passed through the Tennessee Department of F&A to pay for one after-care counselor to assist the counseling team in order to better serve participants at the Davidson County Drug Court.

Justice Assistance Grant 09-13 (b)

The State Trial Courts was allotted \$139,270.50 as part of the Edward Byrne Memorial Justice Assistance Grant (JAG) Program that was awarded to the Metropolitan Police Department from the U.S. Department of Justice. The JAG program allows the governments to support a broad range of activities to prevent and control crime based on their own local needs and conditions.

INTRODUCTION

Courtroom Technology 13

The State Trial Courts was awarded \$10,000 from the U.S. Department of Justice passed through the Tennessee Administrative Office of the Courts to enhance courtroom technology.

ARRA Justice Assistance Grant 09-13

The State Trial Courts was allotted \$172,697.07 as part of the ARRA Edward Byrne Memorial Justice Assistance Grant (JAG) Program that was awarded to the Metropolitan Police Department from the U.S. Department of Justice. The JAG program allows the governments to support a broad range of activities to prevent and control crime based on their own local needs and conditions.

Justice Assistance Grant II-14

The State Trial Courts was allotted \$108,189.66 as part of the Edward Byrne Memorial Justice Assistance Grant (JAG) Program that was awarded to the Metropolitan Police Department from the U.S. Department of Justice. The JAG program allows the governments to support a broad range of activities to prevent and control crime based on their own local needs and conditions.

OBJECTIVES, SCOPE AND METHODOLOGY

A monitoring review is substantially less in scope than an audit. The OFA did not audit the financial statements for the State Trial Courts and, accordingly, does not express an opinion or any assurances regarding the financial statements of the State Trial Courts or the Metropolitan Government of Nashville and Davidson County (hereinafter referred to as “Metro”). The OFA is responsible for the internal monitoring of Metro agencies that receive federal and state financial assistance, including cooperative agreements, and non-profit organizations that receive appropriations from Metro government. In summary, any agreement(s) that imposes performance and/or financial requirements on Metro government is subject to review by the OFA.

The overall monitoring objective was to determine the department’s compliance with grantors and Metro guidelines, policies, rules, and regulations. Specifically, we reviewed for the following objectives:

- To determine whether activities and costs of the program were made in accordance with OMB Circular A-87; the minimum federal, state and local requirements; and grantor guidelines.
- To determine whether the minimum requirements for local matching contributions and/or adequate level of expenditures by other sources of funds are met.
- To determine whether grant funds were used exclusively during the period in which the funds were authorized.
- To determine the reliability and timeliness of the financial and programmatic reporting.
- To determine whether federal compliance requirements regarding sub-recipient oversight were met and whether the sub-recipient performed in accordance with the contract terms.
- To determine whether civil rights requirements are met.
- To determine whether program objectives were met.
- To determine whether the various Metro regulations were followed.

The scope of the work included the grants listed in Appendix A. The methodology adopted by the OFA encompassed various interviews and an objective review of fiscal and programmatic files, including:

- Financial transactions and supporting documentation
- Contract agreements and related amendments
- Federal and/or state financial reports
- Program reports and supporting documentation
- Correspondence between related parties.

RESULTS OF MONITORING

Overall Findings and Major Review Highlights

Our review revealed two discrepancies with policies and grant requirement guidelines. The State Trial Courts:

1. Potential violation of IRS guidelines concerning independent contractor or employee.
2. Failed to adhere to approved grant budget.

The section that follows provides more detailed information for the items listed above. Management is given an opportunity to respond to the findings.

FINDINGS, RECOMMENDATIONS, AND MANAGEMENT'S RESPONSE

1. Potential violation of IRS Guidelines Concerning Independent Contractor or Employee

Finding

The OFA review noted payments to an individual classified as an independent contractor. The contract states “ Compensation: Contractor will work the scheduled hours as designated by his/her supervisor and his/her designee” and under “Job Description : Contractor will monitor and supervise the clients activities and any other related job duties as specified by the contractor’s immediate supervisor” for which State Trial Court is the supervisor.

The OFA’s assessment of the contractual relationship between the STC and the contractor is that the individual is in fact a statutory employee of the STC and not an independent contractor. Under IRS guidelines, “You are not an independent contractor if you perform services that can be controlled by an employer (what will be done and how it will be done). If an employer-employee relationship exists (regardless of what the relationship is called), you are not an independent contractor and your earnings are generally should be subject to Self-Employment Tax.”

Internal Revenues Services rules also require Social Security and Medicare taxes to be withheld from the wages of statutory employees if all three of the following conditions apply.

- The service contract states or implies that substantially all the services are to be performed personally by them.
- They do not have a substantial investment in the equipment and property used to perform the services (other than an investment in transportation facilities).
- The services are performed on a continuing basis for the same payer.

Within Metro Nashville and Davidson County Government, contracts for such services are procured through Personnel Service contract and payments are made directly to the Personnel Service Agency which then issues the compensation to the individuals. Failure to properly classify employees/contractors could lead significant taxes and undue penalties to Metro Nashville government.

Recommendation

The State Trial Courts should immediately request legal interpretation to determine if the compensated individual is an independent contractor or an employee of STC. Upon, the determination from Legal, the STC should implement its recommendation.

FINDINGS, RECOMMENDATIONS, AND MANAGEMENT'S RESPONSE

Management's Response

We concur. We will request a legal interpretation of the contractor in question and comply with IRS guidelines pertaining to the hiring of independent contractors.

2. Failed to adhere to approved grant budget.

Finding

The STC failed to adhere to the approved grant spending plan under the Justice Assistance Grant 11-14. Per the approved grant budget and program narrative, the STC was approved to utilize the grant funds for the following line items: travel, supplies, and consultants/contracts. In addition, the program budget specifically states that the approved consultants/contracts was for copier rentals, drug testing, and medical services and was not intended or approved to pay for contracted personnel cost associated with operation of the Drug Court. Deviation from the approved grant budget in excess of 10% required advanced approval from the grantor. The OFA also noted that the purpose of the grant funds allowed local governments to support a broad range of activities to prevent and control crime based upon their own local needs and conditions. Therefore, the grant funds could have been used personnel cost as long as the STC received prior approval from the grantor.

Recommendation

The State Trial Courts should adhere to the approved grant spending plan and any deviation should be request in writing prior to incurring grant expenditures for activities that were not approved.

Management's Response

We concur. In the future, we will make sure that all deviations from the approved spending plan will be requested in writing to the grantor.

APPENDIX A

Grant	Contract #	Grant Period		Award Amount	Findings
Criminal Justice Residential Drug Court Treatment 11-13	15379	7/1/2001	6/30/2013	\$900,000.00	No
Video Conferencing Traversal Solution 13		7/1/2012	6/30/2013	\$40,000.00	No
Residential Drug Court Treatment 13		7/1/2012	6/30/2013	\$450,000.00	No
Court Interpreter Endowment		7/1/2012	6/30/2013	\$67,000.00	No
Community Corrections 10-13	GG-11-33256	7/1/2010	6/30/2013	\$4,295,480.75	No
Drug Court (TDOC) 11-16	32901-31141	7/1/2011	6/30/2016	\$4,910,000.00	No
State JAG Residential Drug Court 12-13		7/1/2012	6/30/2013	\$50,000.00	No
Justice Assistance Grant 09-13 (b)	2010-DJ-BX-1625	10/1/2009	9/30/2013	\$139,270.50	No
Courtroom Technology 13		7/1/2012	6/30/2013	\$10,000.00	No
ARRA Justice Assistance Grant 09-13	2009-SB-B9-2742	3/1/2009	2/28/2013	\$172,697.07	No
Justice Assistance Grant 11-14	2011-DJ-BX-2599	10/01/2010	09/30/2014	\$108,189.66	Yes